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Sup. Ct.

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1940**

**No. 283**

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**RAILROAD COMMISSION OF TEXAS, LON A. SMITH,  
ERNEST O. THOMPSON, ET AL., APPELLANTS,**

*vs.*

**THE PULLMAN COMPANY, GUY A. THOMPSON,  
TRUSTEE, THE ST. LOUIS, BROWNSVILLE AND  
MEXICO RAILWAY COMPANY, DEBTOR, ET AL.**

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF TEXAS**

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**FILED JULY 26, 1940.**

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**IN UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION**

Civil Action Number 38

THE PULLMAN COMPANY, GUY A. THOMPSON, Trustee,  
The St. Louis, Brownsville and Mexico Railway Company,  
Debtor; Guy A. Thompson, Trustee, International-Great  
Northern Railroad Company, Debtor; Guy A. Thompson,  
Trustee, The Beaumont, Sour Lake & Western Railway  
Company, Debtor; Guy A. Thompson, Trustee, San An-  
tonio, Uvalde & Gulf Railroad Company, Debtor; The  
Texas and Pacific Railway Company, Texas and New  
Orleans Railroad Company, The Atchison, Topeka and  
Santa Fe Railway Company, Gulf, Colorado and Santa  
Fe Railway Company, Panhandle and Santa Fe Railway  
Company, Missouri-Kansas-Texas Railroad Company of  
Texas, Frank O. Lowden, James E. Gorman, and Joseph  
B. Fleming, Trustees, The Chicago, Rock Island and Pa-  
cific Railway Company, Debtor; Berryman Henwood,  
Trustee, St. Louis Southwestern Railway Company of  
Texas, Debtor; St. Louis, San Francisco and Texas Rail-  
way Company, The Kansas City Southern Railway Com-  
pany, Fort Worth and Denver City Railway Company,  
Plaintiffs,

vs.

THE RAILROAD COMMISSION OF TEXAS, LON A. SMITH, as Chair-  
man and Individually; Ernest O. Thompson and Jerry  
Sadler, as Railroad Commissioners and Individually;  
Gerald C. Mann, as Attorney General of Texas and Indi-  
vidually, Defendants

**AMENDED COMPLAINT—Filed November 28, 1939**

To the Honorable Judges of said Court:

The Pullman Company, a corporation; Guy A. Thompson,  
Trustee, The St. Louis, Brownsville and Mexico Railway  
Company, Debtor; Guy A. Thompson, Trustee, Interna-  
tional-Great Northern Railroad Company, Debtor; Guy A.  
Thompson, Trustee, The Beaumont, Sour Lake & Western  
[fol. 3] Railway Company, Debtor; Guy A. Thompson,

Trustee, San Antonio, Uvalde & Gulf Railroad Company, Debtor; The Texas and Pacific Railway Company; Texas and New Orleans Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Panhandle and Santa Fe Railway Company; Missouri-Kansas-Texas Railroad Company of Texas; Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees, The Chicago, Rock Island and Pacific Railway Company, Debtor; Berryman Henwood, Trustee, St. Louis Southwestern Railway Company of Texas, Debtor; St. Louis, San Francisco and Texas Railway Company; The Kansas City Southern Railway Company; and Fort Worth and Denver City Railway Company; as plaintiffs, file this, their Complaint against the Railroad Commission of Texas; and Lon A. Smith, as Chairman, and Ernest O. Thompson and Jerry Sadler in their official capacities as members of the Railroad Commission of Texas; and Gerald C. Mann in his official capacity as Attorney General of the State of Texas; and against each of said named persons individually; and for cause of complaint respectfully aver:

1. The Pullman Company is a private corporation duly organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and residence in the City of Chicago, Cook County, Illinois; each of the above named railroad and railway companies, except The Texas and Pacific Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Kansas City Southern Railway Company and The Atchison, Topeka and Santa Fe Railway Company, is a corporation duly organized and incorporated under the laws of the State of Texas; The Texas and Pacific Railway Company is a corporation created by the Act of the Congress of the United States approved March 3, 1871, and Acts supplemental thereto approved, respectively, May 2, 1872, March 3, 1873, June 22, 1874, and February 9, 1923, and has its principal [fol. 4] office in the city of Dallas, in Dallas County, Texas; The Kansas City Southern Railway Company is a corporation duly organized and incorporated under the laws of the State of Missouri and has its principal office and residence in the City of Kansas City, in the State of Missouri; and The Atchison, Topeka and Santa Fe Railway Company is a corporation duly organized and incorporated under the laws of the State of Kansas and has its principal

office and residence in the City of Topeka, in the State of Kansas; The Chicago, Rock Island and Pacific Railway Company is a corporation duly organized under the laws of the State of Illinois, having its principal office and residence in the City of Chicago, in Cook County, Illinois. The above named Guy A. Thompson and Berryman Henwood are residents of the City of St. Louis, in the State of Missouri. The above named Frank O. Lowden, James E. Gorman and Joseph B. Fleming are residents of Cook County, in the State of Illinois.

a. Under date of March 31, 1933, Missouri Pacific Railroad Company, a railroad corporation, having its principal operating office at St. Louis, Missouri, filed its petition for reorganization of a railroad under the provisions of the Bankruptcy Act of 1898, as amended, and particularly as amended by the Act of March 3, 1933, in the United States District Court, Eastern Division, Eastern Judicial District of Missouri. On the same date, such petition was approved as properly filed and said Federal Court took jurisdiction, possession, management and control of the rights, properties, franchises and railroad of Missouri Pacific Railroad Company, Debtor.

b. On the same date, International-Great Northern Railroad Company, a railroad corporation, organized and existing under the laws of the State of Texas, filed its petition setting out that the Missouri Pacific Railroad Company owned indirectly through an intervening medium a majority [fol. 5] of the capital stock of the International-Great Northern Railroad Company, Debtor, having power to vote for the election of directors, and that said Missouri Pacific Railroad Company, Debtor, had previously filed its petition for reorganization; and, therefore, the International-Great Northern Railroad Company desired to effect a plan of reorganization in connection with, or as a part of, the plan of reorganization of the Missouri Pacific Railroad Company. On the same date, said Federal Court entered its order approving said petition of said International-Great Northern Railroad Company as properly filed, and took jurisdiction, possession, management and control of the franchises, rights, property and railroad of International-Great Northern Railroad Company, Debtor.

c. Thereafter, on May 2, 1933, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, and San Antonio, Uvalde & Gulf Railroad Company filed in said Federal court a petition setting out that each of said Railway Companies was a railroad corporation, duly organized and existing under the laws of the State of Texas, that said Missouri Pacific Railroad Company, Debtor, owned indirectly through an intervening medium a majority of the capital stock having power to vote for the election of directors; and that each of said corporations desired to effect a plan of reorganization in connection with, or as a part of, the plan of reorganization of the Missouri Pacific Railroad Company.

d. Thereafter, under date of June 22, 1933, the Judge of said Federal Court appointed L. W. Baldwin and Guy A. Thompson as temporary Trustees of all and singular the railroads, lands, properties, estates, rights and franchises of the Missouri-Pacific Railroad Company, International-Great Northern Railroad Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, and San Antonio, Uvalde & Gulf Railroad Company; and said Trustees made [fol. 6] the bond required, and became the duly appointed qualified and acting temporary Trustees thereof.

e. Thereafter, under date of July 25, 1933, the Judge of said Federal Court made said appointment permanent. Thereafter, under date of December 26, 1935, said L. W. Baldwin resigned as one of said Trustees, and by order dated December 26, 1935, said Federal Court appointed Guy A. Thompson as sole Trustee with all the rights and liabilities theretofore accorded the joint Trustees; and said order further approved the bond of said Guy A. Thompson, Trustee; therefore, said Guy A. Thompson is now the duly appointed, qualified and acting Trustee, severally, of the lines hereinabove mentioned.

f. The Texas and Pacific Railway Company and Missouri-Kansas-Texas Railroad Company of Texas have their principal offices, respectively, and reside in the City of Dallas, in Dallas County, Texas; Texas and New Orleans Railroad Company is a resident of, and has its principal office in, the City of Houston, in Harris County, Texas; the Gulf, Colorado and Santa Fe Railway Company has its principal

office in the City of Galveston, Galveston County, Texas; the Panhandle and Santa Fe Railway Company has its principal office and residence in the City of Amarillo, in Potter County, Texas; Fort Worth and Denver City Railway Company is a resident of and has its principal office in the City of Fort Worth, Tarrant County, Texas.

g. By an order of the District Court of the United States for the Northern District of Illinois, Eastern Division, dated November 22, 1933, in a cause entitled "In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor," numbered 53200 on the docket of said Court, Frank O. Lowden, James E. Gorman and Joseph B. Fleming were temporarily appointed Trustees of The Chicago, Rock Island and Pacific Railway Company. At the same time they were temporarily appointed Trustees of The Chicago, Rock [fol. 7] Island and Gulf Railway Company. Both appointments were made permanent by an order of the Court in said cause entered on December 28, 1933. On September 1, 1939, acting under authority of the Interstate Commerce Commission as granted by its order of April 3, 1939, under Finance Docket Number 11847, entitled "Chicago, Rock Island & Gulf Railway Company Trustees Lease," a contract of lease was entered into by and between the said Trustees of The Chicago, Rock Island and Pacific Railway Company and the said Trustees of The Chicago, Rock Island and Gulf Railway Company, whereby the possession and operation of the railroad and properties of the latter company were delivered over to the Trustees of The Chicago, Rock Island and Pacific Railway Company. Pursuant to the terms and provisions of said lease contract the said Trustees of The Chicago, Rock Island and Pacific Railway Company on and after September 1, 1939, have operated and are now operating the lines of railroad and properties of the said The Chicago, Rock Island and Gulf Railway Company. The said Frank O. Lowden, James E. Gorman and Joseph B. Fleming are now the duly appointed, qualified and acting Trustees of the said The Chicago, Rock Island and Pacific Railway Company and, as such, under said lease, they are in possession of and are operating the railroads, lands, properties, estates, rights and franchises of the said The Chicago, Rock Island and Gulf Railway Company.

h. The railroad and properties of the St. Louis Southwestern Railway Company of Texas are in possession of and

are operated by Berryman Henwood, Trustee, who is the duly acting and qualified Trustee of said properties under and by virtue of an appointment by the United States District Court for the Eastern Judicial District of Missouri, Eastern Division, in a case entitled-In the Matter of St. Louis Southwestern Railway Company, Debtor, Number 8497, pending on the docket of said court; said order having [fol. 8] been entered by said court on the 3rd day of January, 1936.

2. Each of the plaintiffs, excepting The Pullman Company, operates trains in or through portions of the State of Texas including Pullman cars furnished by The Pullman Company pursuant to contracts between The Pullman Company and the respective plaintiffs. Such contracts contain provisions that The Pullman Company shall furnish all standard sleeping cars, properly equipped and acceptable to the railroad company, in sufficient number to meet the requirements of travel over the lines of the railroad. Some of the contracts provide that the number of cars so furnished shall be determined by the operating officers of the railroad, and others provide that the number of cars shall be mutually determined by the operating officers of the railroad and The Pullman Company. All of said contracts provide that The Pullman Company shall have the right to collect from the occupants of its cars, for the use of seats, berths and other accommodations therein, such fares as are charged on lines of railroad competing with the lines of the contracting railroad company, where similar accommodations are furnished; and that The Pullman Company shall provide suitable employees for collecting such fares and furnishing the usual sleeping car service to the passengers therein. Each of the contracts provides that such employees shall, when on duty, be subject to the rules of the railroad company governing its own employees; and also that in order to maintain service acceptable to the railroad company and to the traveling public, The Pullman Company shall furnish agents or inspectors to supervise the sleeping car service, including the conduct of employees, the cleanliness of cars, and such matters. Said contracts set forth generally the obligations and liabilities of the respective parties, and methods of sharing the gross earnings from the sale of seats, berths and other accommodations on the sleeping cars so furnished, certain provisions taking into con-

[fol. 9] sideration the expenses of operation of The Pullman Company in furnishing the cars and providing the sleeping car service. Under said contracts, the railroad companies do not have the right to direct, nor do such companies assume to direct, The Pullman Company as to what employees or what number or classes of employees shall be assigned to the cars operated over the respective lines of railroad.

3. The action arises under the Fourteenth Amendment to the Constitution of the United States, Section 1, the due process clause and the equal protection clause; and under the Constitution of the United States, Article I, Sec. 8, the commerce clause; under Article I, Sec. 10, the contract clause; and under the laws of the United States, including the Act of August 27, 1935, c. 774, 49 stat. 911, and amendments thereto and the laws amended thereby; United States Code, Title 11, Sec. 205, et seq.; as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00 as to plaintiffs jointly, and as to each plaintiff individually. This is a suit of a civil nature. All defendants reside, officially, in Travis County, Texas; and defendant Lon A. Smith is domiciled in said County.

4. Defendants Lon A. Smith, Ernest O. Thompson and Jerry Sadler, purporting to act in their several official capacities as members of the Railroad Commission of Texas, signed, entered and promulgated an order as the order of the Railroad Commission of Texas, dated the 8th day of August, 1939, and effective September 1, 1939, requiring that, after the effective date of said order, "no sleeping car shall be operated on any line of railroad in the State of Texas when occupied by passengers holding the proper transportation for the accommodation of such cars, unless such cars are continuously in the charge of an employee or an authorized agent of the firm or corporation owning or [fol.10] operating the same having the rank and position of Pullman conductor." Said order, in the next succeeding sentence, provides: "The use of the terms 'firm' or 'corporation' as employed in the next preceding paragraph hereinabove is meant to include all companies as defined by Article 6479, Revised Civil Statutes of Texas." A copy of said order is attached to this Complaint and made a part hereof and marked Exhibit "A".

5. Said order (Exhibit "A") having been issued by the Commission without notice or hearing, plaintiff The Pullman Company, through its attorneys, promptly applied to the Railroad Commission for a rehearing, for the purpose, as then stated, of showing that the Commission has no authority to issue such an order; and said plaintiff requested that, pending further action by the Commission, said order be suspended. Pursuant to said request the Commission issued an order, dated August 19, 1939, postponing the effective date of the aforesaid Passenger Circular No. 164 to September 15, 1939, and notifying the interested parties of a hearing to be held on August 31, 1939, wherein the Commission proposed to "take up and consider the matter of operating sleeping cars on any line of railroad in the State of Texas when occupied by passengers holding the proper transportation for the accommodation of such cars, unless such cars are continuously in the charge of an employee or an authorized agent of the firm or corporation owning or operating the same having the rank and position of Pullman conductor." A copy of said order of August 19, 1939, is here attached, marked Exhibit "B".

6. Pursuant to the aforesaid notice (Exhibit "B") the plaintiffs, through counsel, appeared at said hearing on August 31, 1939, and stated at the beginning of the hearing that they objected to any such order on the ground that the same is beyond any authority heretofore granted to the Commission by the Legislature. All evidence offered in [fol. 11] behalf of plaintiffs at said hearing was presented subject to said objection.

7. Pursuant to the Commission's direction the hearing was conducted by an examiner, and the record of the hearing was subsequently transcribed. No final action was taken by the Commission until on November 4, 1939. Meanwhile, the Commission, of its own motion, by orders issued, respectively, on September 6, 1939, October 3, 1939 (erroneously dated September 3, 1939), and October 27, 1939, postponed the effective date of said Passenger Circular 164, successively, to October 5, 1939, to November 1, 1939, and to November 15, 1939, respectively. Copies of said orders are hereto attached, marked Exhibits "C," "D," and "E," respectively.

8. Thereafter, on or about the 4th day of November, 1939, the Railroad Commission of Texas issued its order whereby, among other things, (as was done in Passenger Circular No. 164) it is "ordered, adjudged and decreed that no sleeping car shall be operated on any line of railroad in the State of Texas when occupied by passengers holding the proper transportation for the accommodation of such cars, unless such cars are continuously in the charge of an employee or an authorized agent of the firm or corporation owning or operating the same having the rank and position of Pullman conductor."

The order of November 4, 1939, is more extensive than the original order (Exhibit "A"), all of which is more fully made to appear by the said order of November 4, 1939, a copy of which is hereto attached, marked Exhibit "F", and hereby made a part of this Complaint with the same effect as if textually incorporated herein at this place. The latter order contains many erroneous findings that are contrary to the facts, the detailed denial of which would unduly extend this Complaint and unnecessarily encumber the record.

9. Said order of November 4, 1939 (for brevity herein-after referred to as the challenged order) is predicated [fol. 12] upon findings made by the Commission to the effect that the operation of said Pullman cars without a Pullman conductor in charge constitutes an abuse and discrimination in the matter of fares, charges, compensation and rates, and that such operation is violative of Articles 4005, 4013 and 6474, Revised Statutes, 1925; and that the charges made by the railroads and The Pullman Company for transportation in such cars and for the privilege of riding therein are unjust and unreasonable. As further appears from said order, the action taken by the Commission is predicated upon a purported consideration of not only the "safety, care, convenience, proper accommodation and transportation of passengers on Pullman cars," but of the "charges, fares and transportation of passengers on sleeping cars and Pullman cars within the State of Texas, and to prevent abuses, unjust discrimination and extortion in rates."

10. No notice was issued by the Commission that at the hearing on the 31st day of August, 1939, the Commission would consider the matter of the proper "charges and fares

of passengers on sleeping cars and Pullman cars" or that the Commission would consider the matter of preventing "unjust discrimination and extortion in rates." Thus, while the challenged order is expressly predicated upon the authority assumed by the Commission to define and prohibit abuses and to define and correct "unjust discrimination and extortion in rates," no notice was issued by the Commission that the matter of defining or correcting "unjust discrimination and extortion in rates" would be involved in said hearing, and no appearance was entered at said hearing for any such purpose.

11. No hearing has been called or held by the Commission for the purpose of determining whether a differential in the rate should be recognized, or whether different rates should be adopted for the transportation services that in the challenged order are declared to be different in quality. [fol. 13] The Commission has not called or conducted a hearing for the purpose of determining, and has not determined, what would be a reasonable rate of railroad fare for passengers accommodated in a Pullman car not in charge of a Pullman conductor, as distinguished from the rate applicable to passengers accommodated in a Pullman car that is attended by a Pullman conductor. And the Commission under existing conditions is powerless to issue or enforce a tariff allowing such differential since, as elsewhere shown herein, such tariff would be in conflict with interstate tariffs approved by the Interstate Commerce Commission.

12. While the challenged order professes to have been issued for the purpose of preventing and correcting "unjust discrimination and extortion in rates," the order is an effort to compel the plaintiffs to render a certain service in a particular way. It does not prescribe different rates for services found to be different, but, instead, attempts to require the railroad companies and The Pullman Company to abolish the differences in services being rendered. In this connection plaintiffs show that the Railroad Commission has no authority to require that the services rendered by the railroad companies and The Pullman Company shall be equal or identical in character or value to the passengers. Its power, if any, to prescribe different rates for services that are actually different in value to the pas-

sengers does not involve the power to require that only equal or identical services be rendered. The order does not in fact correct or prevent any "unjust discrimination and extortion in rates." The challenged order is predicated upon the assumption, contrary to fact, that the service furnished by the railroad company to passengers in a Pullman car not in charge of a Pullman conductor is substantially inferior to that furnished to passengers on another train in a Pullman car attended by a Pullman conductor. This constitutes no valid ground for the issuance or enforcement of an order by the Railroad Commission prohibiting [fol. 14] the operation of trains carrying a Pullman car not in charge of a Pullman conductor. On the pretended ground that the order is designed to prevent "unjust discrimination and extortion in rates," the Commission has issued the challenged order in the guise of a rate order. Furthermore, the operation of the trains carrying a Pullman car not in charge of a Pullman conductor does not work an unjust discrimination or extortion in rates as between passengers, nor does it result in an undue or an unreasonable preference or advantage as to passengers, either in rates or in service. And such operation does not discriminate against passengers in the Pullman cars as distinguished from passengers in the chair cars.

13. The challenged order is in substance an order attempting to define and prohibit acts deemed by the Commission to constitute an abuse. No power or authority has been conferred upon the Railroad Commission or the members thereof to promulgate the challenged order. The power to make and enforce regulations governing railroads and common carriers is limited to the powers expressly defined in Articles 6445 and 6448, Revised Civil Statutes of Texas of 1925. By no statute has the Commission been empowered to determine how many or what employees shall attend a sleeping car or that sleeping cars or Pullman cars shall be in charge of a Pullman conductor or a person having the rank and position of Pullman conductor. The "abuses," the correction of which is entrusted to the Commission by said statutes, are limited to such acts as have been defined as abuses by valid statutes enacted by the Legislature. The Railroad Commission has not been given power by any statute to define abuses, to enact a law or to issue and enforce an order or decree denouncing as abuses

such acts as may be deemed by the Commission to be abuses. No statute has defined as an abuse the operation of a train carrying a sleeping car or cars occupied by passengers holding the proper transportation for such accommodations [fol. 15] "unless such cars are continuously in the charge of an employee or an authorized agent of the firm or corporation owning and operating the same having the rank and position of Pullman conductor"; nor is such operation an abuse in fact.

14. If the sleeping cars forming a part of the trains described in Exhibit "G" were owned and supplied by the railroads instead of by The Pullman Company, there would be no reason for requiring, and the Railroad Commission would have no authority to require, that the railroads operating such trains should have two conductors instead of one conductor on the trains. The duty of the operating railroad company to the passengers on the sleeping cars in such trains is not different from what it would be if such cars were owned and supplied by the railroad company instead of being owned and supplied by The Pullman Company under contract between The Pullman Company and the railroad company. In each instance the train is operated by the railroad company, and each and all of the cars making up the train are in charge of the train conductor. If, in performing the service to which the passengers are entitled, additional employees were needed to assist the train conductor in operating the train, the Railroad Commission would have no authority to require that such assistance be furnished by The Pullman Company instead of by the railroad company, or to require that the requisite service be performed by an employee having the rank and title of Pullman conductor. Under no circumstances has the Commission the power to compel the railroad companies to have a given service or services performed by an employee of The Pullman Company or by such an employee having the rank and title of Pullman conductor.

15. The contracts between The Pullman Company and the railroads referred to in the challenged order were not made for the benefit of strangers to the contracts in the sense that persons other than the parties to the contracts [fol. 16] have any beneficial interests in them or rights thereunder. And the Railroad Commission has no jurisdiction over such contracts and no duties to perform in

respect of said contracts. The contracts have not been breached and are not being breached in respect of the matters referred to in the challenged order but are being fully performed to the entire satisfaction of the parties thereto. The rights of passengers on the railroad trains are not dependent upon the making of such contracts; the absence of such contracts would not diminish the rights of passengers on the railroad trains, and the existence of the contracts adds nothing to such rights. It is of no consequence to the passengers whether the railroads supply the sleeping car accommodations or whether by means of contracts they cause such accommodations to be furnished by The Pullman Company.

16. It is not true that The Pullman Company is dependent upon the Pullman conductor to supervise the conduct of employees and the cleanliness of cars, etc., while en route. Nor is it true that The Pullman Company has not furnished any other agent to supervise such conduct of employees and cleanliness of the cars except Pullman conductors. On the contrary, The Pullman Company furnishes traveling inspectors, district representatives and operating agents who are constantly engaged in the supervision of Pullman employees and service. In the matter of preserving order and protecting the passengers from annoyance, the train conductor has charge of the entire train. The obligation of the railroad company to the passengers in this respect is not different on the trains mentioned in Exhibit "G" from what it is on the heavier trains carrying a Pullman conductor. On the lighter trains such as described in Exhibit "G" carrying, as a rule, only one Pullman car, the conductor has a better opportunity to give his personal attention to all passengers on the train. The brakeman or flagman on all such trains is required to ride in the Pullman [fol. 17] car, the rear of the train, while the train is in motion. Passenger traffic on such trains is not heavy enough to require the services of additional employees.

17. The fact, if it be a fact, that on one occasion or more than one occasion a Pullman porter has become intoxicated while on duty constitutes no ground for the issuance of the challenged order. Such rare occurrences are not confined to Pullman porters. They are not confined to the negro race. It is not a fact, and the Commission has not found, that the service rendered either by the railroad companies

or by The Pullman Company on the lines described in Exhibit "G" has been unsatisfactory to the passengers on account of drunkenness of the Pullman porters. The Commission has not found, and it is not a fact, that the Pullman porters on such runs are incompetent or that Pullman porters on such runs are inherently or as a class offensive, untrustworthy or unsatisfactory.

18. The Railroad Commission in issuing the challenged order has discriminated against certain employees of The Pullman Company because they belong to the negro race. The effect of the order is to prohibit and prevent the performance of certain services by employees of the negro race, and to prohibit and prevent the earning by such employees of the additional compensation now earned by them for the performance of such services; and to require that such services be performed by Pullman employees who are members of the white race. In this connection the plaintiffs show that the fact that the Pullman car and the furnishings and property of The Pullman Company in the car are placed in the custody of the porter in the lines described in Exhibit "G" does not mean that the Pullman porter is placed in charge of or undertakes to control or manage the passengers accommodated in the Pullman car. The railroad conductor is at all times in charge of every car in the train.

[fol. 18] 19. On all the lines described in Exhibit "G" interstate passengers are transported in the Pullman cars. On some of them, notably those described as Pullman Line No. 3175, operating between Shreveport, Louisiana, and Kansas City, Missouri, the only passengers transported in the Pullman cars in the State of Texas are interstate passengers. The challenged order recites that "it is not the intention of the Commission to place any burden on interstate commerce. If any part of this order or the application and the enforcement thereof when applied to any one or more railroads or any operation thereof be held to be an undue burden on interstate commerce, then such holding shall not affect this order as applied to other operations by railroads not amounting to an undue burden on interstate commerce." The order, however, does apply to interstate commerce and not only constitutes a burden on interstate commerce, but in its application to interstate transportation it is in conflict with applicable passenger

tariffs in force with the approval of the Interstate Commerce Commission. Under and pursuant to such interstate tariffs, the plaintiff railroad companies are entitled to transport passengers in the Pullman cars without being required to conform to the burdens of the challenged order. And The Pullman Company is likewise entitled, pursuant to published sleeping car tariffs approved by the Interstate Commerce Commission, to accommodate such passengers on the lines described in Exhibit "G", without being required to conform to the challenged order. The effect of the order if enforced, is to deny to the plaintiff railroad companies the right to transport, and to deny to The Pullman Company the right to accommodate, the interstate passengers on said lines pursuant to the interstate tariffs approved by the Interstate Commerce Commission. The intrastate transportation and interstate transportation of passengers on such lines are so related that the government [fol. 19] of the one involves the control of the other. Consequently, the final and dominant rule is that prescribed by the Interstate Commerce Commission pursuant to Acts of Congress. Hence, the challenged order, being in conflict with the superior regulations promulgated by the Interstate Commerce Commission, is void.

20. The passengers accommodated in the Pullman cars on the lines described in Exhibit "G" receive from the railroad employees, including the conductor and the brakeman or flagman, service and attention that such employees cannot ordinarily render on the heavier trains. Consequently, a portion of the service rendered to passengers on the heavier trains is rendered by a Pullman conductor. Traffic conditions being different, the railroad companies and The Pullman Company have the right, in the management of their properties, to adjust the duties of employment between the several employees in a way that is appropriate to the varying traffic conditions. The challenged order, unless enjoined, will operate as an arbitrary and unreasonable interference with such right and will require the employment of additional Pullman employees, whose employment is not warranted by the transportation demands.

21. As defendants construe and will attempt to apply the challenged order, it purports to prohibit the operation in the State of Texas of a Pullman or sleeping car or cars

as a part of a railroad passenger train unless such cars while occupied by passengers are continuously in charge of a Pullman conductor, notwithstanding the fact that all Pullman cars, as an integral part of the train, are at all times in charge of the train conductor, who is the ranking officer on the train; and the railroad passengers in the Pullman car are entitled to the same services on the part of the train conductor that are performed in respect of other passengers on the train, and in addition the extra or special services rendered to passengers by The Pullman Company in the Pullman car. At the present time a number [fol. 20] of the regularly scheduled railroad passenger trains in the State of Texas on which Pullman sleeping cars are operated have no Pullman conductor on board during all or a portion of the route. Such method of operation is not of recent origin in the State of Texas or in the other States of the United States. On the contrary, it has obtained under appropriate conditions in various portions of the country since the beginning of Pullman car operations, and has been generally followed throughout the company's history of approximately 72 years. And, as is hereinafter more particularly shown, such method of operating trains has obtained on some of the lines now in operation in the State of Texas for a period of approximately 14 years, and on other lines previously in operation in Texas for periods prior thereto. Attached hereto and marked Exhibit "G", and hereby made a part of this Complaint, is a statement listing and describing the Pullman car operations on passenger trains now regularly operated in the State of Texas, and in effect on August 8, 1939, the date of the Commission's order, each train with a Pullman car that between designated points is not in charge of a Pullman conductor. Said Exhibit "G" shows as to each such operation: in column 1, the number by which The Pullman Company designates the line; in column 2, the terminals, that is to say, the points between which Pullman cars are operated as part of the train on the designated railroad or railroads; and in the 3rd, 4th, 5th, 6th and 7th columns the points in the State of Texas between which Pullman cars are operated without a Pullman conductor, the time of departure from, and time of arrival at, and distance in miles between such Texas points. The time schedules shown in Exhibit "G," subject to change by the railroad company, are the schedules presently in

effect, and are fairly typical of the schedules that have been in effect on such railroads during the existence of such operations.

[fol. 21] 22. As shown by Exhibit "G" of this Complaint, among the trains that would be affected by the challenged order of the Commission are:

Pullman Line 3723—St. Louis-Brownsville. Trains Nos. 15 and 16 of The St. Louis, Brownsville and Mexico Railway Company (presently operated by Guy A. Thompson, Trustee) operate between Houston, Texas, and Brownsville, Texas. This operation has two Pullman cars with a Pullman conductor between Houston and Harlingen, situated about 25 miles from Brownsville. At Harlingen one of the Pullman cars, with the Pullman conductor, on the southbound train is transferred to a branch line and goes to Mission, a distance of about 40 miles from Harlingen. The other Pullman car continues from Harlingen to Brownsville, without the conductor, a distance of 25 miles. According to the present schedule the southbound train arrives at Harlingen at 7 a. m., leaving shortly thereafter, and arriving at Brownsville at 7:55 a. m. The northbound train, originating at Brownsville, according to the present schedule, carries one Pullman car from Brownsville to Harlingen, leaving Brownsville at 9 p. m. and arriving at Harlingen at 10 p. m., at which point the train picks up the Pullman car originating at Mission with the Pullman conductor, and the train from Harlingen to Houston carries a Pullman conductor. Compliance with the challenged order would require either two Pullman conductors on the train at the same time north of Harlingen or would require the stationing of a Pullman conductor at either Brownsville or Harlingen for the purpose of traveling on the trains between those points, a total distance of 50 miles per day, covering a period of approximately two hours per day.

Pullman Line 3128—Fort Worth-Houston. The Texas and New Orleans Railroad Company operates a train between Houston, the southern terminal, and Dallas and Fort Worth, the two northern terminals. The northbound train [fol. 22] originating at Houston carries a Pullman car destined to Dallas and a Pullman car destined to Fort

Worth. At Ennis the northbound train divides, one portion of the train carrying one Pullman car going to Fort Worth and the other portion going to Dallas. The Pullman conductor accompanies the Dallas train between Ennis and Dallas, and between Ennis and Fort Worth the train does not carry a Pullman conductor. This operation has been in effect continuously since 1925. Compliance with the challenged order would require the unnecessary employment of an additional Pullman conductor to accompany the train between Fort Worth and Ennis, a distance of 56 miles.

Pullman Line 3258—Houston-Wichita Falls. The Missouri-Kansas-Texas Railway Company of Texas operates a daily train on which a Pullman car is operated in each direction between Houston and Wichita Falls, Texas, carrying a Pullman conductor between Houston and Fort Worth; and operating one Pullman car between Fort Worth and Wichita Falls without a Pullman conductor. The present schedule between Fort Worth and Wichita Falls is from 8:30 a. m. to 1:30 p. m.; and from Wichita Falls to Fort Worth from 4:40 p. m. to 10 p. m. On the Pullman car between Fort Worth and Wichita Falls the line averages 2.3 passengers northbound and 3.4 passengers southbound daily.

Pullman Line 3309—Galveston-St. Louis. The International-Great Northern Railroad Company, in connection with other railroads, operates a train daily in each direction between Galveston, Texas, and St. Louis, Missouri. Between Houston and St. Louis the train carries more than one Pullman car and is accompanied by a Pullman conductor. Since March 15, 1925, the train has carried one Pullman car between Galveston and Houston, a distance of 50 miles, without a Pullman conductor. The present northbound schedule from Galveston to Houston is 10:30 a. m. to noon, and the southbound schedule, Houston to Galveston, is 1:10 p. m. to 2:40 p. m.

[fol. 23] Pullman Line 3748—Dallas-Corpus Christi. The San Antonio, Uvalde and Gulf Railroad Company operates a daily train in each direction between San Antonio and Corpus Christi, Texas. The operation involved carries Pullman cars between Dallas and San Antonio with a Pullman conductor; and a single Pullman car between San Antonio and Corpus Christi with no Pullman conductor. According to the present schedule the train leaves San Antonio at 8:30 a. m., arriving at Corpus Christi at 12:45

p. m.; and returning leaves Corpus Christi at 5:30 p. m. and arriving at San Antonio at 9:45 p. m., a distance of 150 miles. In the Pullman car between those points the train averages daily 3 passengers northbound and 4 passengers southbound.

Pullman Line 3501—St. Louis-El Paso. On the train operated by the Texas and Pacific Railway Company in conjunction with the Missouri Pacific Railway Company between St. Louis and El Paso the operation is without a Pullman conductor from Texarkana to Marshall, a distance of 67 miles, covering a period of time of approximately one hour and thirty minutes. This method of operation has been in effect for more than twelve years.

On Pullman Line 3424 on the train operated by the St. Louis, San Francisco and Texas Railway Company in conjunction with the St. Louis, San Francisco Railway Company, between Galveston and Tulsa, the train is without a Pullman conductor between Denison and Tulsa, in each direction; which means that such operation within the State of Texas is between Denison and Platter, a distance of only 11 miles.

Pullman Line 3273 on the train operated by the Missouri-Kansas-Texas Railway Company of Texas in conjunction with the Missouri-Kansas-Texas Railway Company, between San Antonio, Texas, and Kansas City, Missouri, carries a Pullman car without a Pullman conductor between Denison and Kansas City, both directions. The operation in the State of Texas without a Pullman conductor [fol. 24] is between Denison and Colbert, a distance of only 7 miles, a daylight operation in both directions, covering a period of less than 30 minutes.

Pullman Line 3175 on a train of the Kansas City Southern Railway Company operates between Shreveport, Louisiana, and Kansas City, Missouri, without a Pullman conductor, and has so operated for a period of approximately 7 years. The train traverses a corner of the State of Texas between Bloomberg and Texarkana, a distance of only 21 miles, in approximately 30 minutes.

Pullman Line 3015. The Atchison, Topeka and Santa Fe Railway Company operates an interstate train between El Paso, Texas, and Albuquerque, New Mexico, including a Pullman car with no Pullman conductor. The operation in the State of Texas is between El Paso and La Tuna, a distance of only 18 miles, requiring approximately 30 minutes.

Pullman Line 3531—Marshall-Little Rock. The Texas and Pacific Railway Company operates in Texas an inter-state train which runs from Fort Worth to Memphis, carrying a Pullman car without a conductor from Marshall, Texas, to Little Rock, Arkansas. The car is so operated in Texas from Marshall to Texarkana, a distance of 67 miles.

23. As examples of type of trains described in Exhibit "G": The St. Louis, Brownsville and Mexico Railway Company, Trains 15 and 16 (Pullman Line 3723 as described in Exhibit "G"), each consists of 3 passenger cars, including the Pullman car. International-Great Northern Railroad Company, Trains 21 and 22 (Pullman Line 3309), carrying a Pullman car without a conductor between Galveston and Houston, each consists of two passenger cars, including the Pullman. Trains known as Beaumont, Sour Lake & Western Railway, Trains 3 and 4 (Pullman Line 3010), each consists of 4 passenger cars, including the Pullman. Trains 205 and 206 of the San Antonio, Uvalde & [fol. 25] Gulf Railroad (Pullman Line 3748), each consists of 3 passenger cars, including the Pullman. In each of the trains mentioned, there is in addition to the passenger cars, either a baggage car or a combination baggage, express and mail car. All of the other trains described in Exhibit "G" are what is known as light passenger traffic trains on that part of the route where, as shown, the Pullman car is without a Pullman conductor. During such operation none of said trains carries more than 3 passenger cars, including a Pullman car. Each of the trains described in Exhibit "G" is at all times in charge of the train conductor, assisted by a flagman or brakeman and usually by a train porter.

24. In addition to the regularly scheduled Pullman operations described in Exhibit "G", the plaintiff railroad companies at irregular intervals carry as a part of their trains, as demand for such service arises, what are known as chartered sleeping cars, and on other occasions what are known as private cars. Such cars are owned, and with their necessary attendants are supplied, by The Pullman Company. Chartered cars are as rule similar in their appointments to the standard Pullman cars operated on regularly scheduled runs. The private cars, of which The Pullman Company owns a number, are available for charter by individuals, or groups at scheduled tariff rates which are on file with the Interstate Commerce Commission. Sleeping cars are also

available for charter by individuals or groups. Persons using such private cars as well as the chartered sleeping cars are passengers who hold railroad transportation and are entitled to accommodations therein. Under published tariffs, eighteen railroad fares are required to cover the transportation of these cars, which revenue accrues entirely to the railroads over which the cars are operated. Collection of the Pullman tariff rate covering the use of these cars, the amount being dependent upon the period the cars are to be used, is made in advance by the representative of [fol. 26] *the* The Pullman Company arranging the movement. It has been the practice of The Pullman Company to provide conductors for private cars, since there are no duties for a conductor to perform and there has been no demand for a Pullman conductor in operations of that kind. The regular crew of a private Pullman car consists of a cook and two attendants, but frequently at the request of the person or persons engaging the car only a cook and one attendant are furnished. Private cars are usually placed at or near the head end of the train to insure privacy to the occupants of such cars. Thus, while cars of this type may be handled in a train on which a Pullman conductor is operated, he has no jurisdiction over them. Such cars are operated in accordance with itineraries provided in advance by the parties engaging them. Frequently itineraries provide for layovers for extended periods. Persons engaging such cars would object to the presence of a conductor since he would not only be in the way, but would have to be provided with accommodations and with meals at the expense of the persons engaging such cars.

25. The need for a Pullman conductor on a given train is determined by operating conditions affecting that train, including the volume of traffic, the length of the train, with the consequent demands upon the time and services of the railroad and Pullman employes. In determining whether a given train shall be attended by a Pullman conductor, The Pullman Company necessarily relies upon its knowledge gained from long experience and study of operating conditions. In general, the operation of Pullman cars without Pullman conductors applies to comparatively short distances, frequently to only a small portion of the entire length of the run of the car. The nature of the duties of the porter is such that his services are necessary on the car.

The operations on which Pullman conductors are not now being used in Texas embrace runs of the kind above described and those in which traffic is light and where the [fol. 27] revenue and other factors do not warrant the additional expense that would be incurred in providing Pullman conductors. The earnings per Pullman car on many of such lines is substantially below the expense point. If The Pullman Company is required to provide a Pullman conductor for such train that carries a Pullman car, the operating expense will be increased thereby to such an extent that the company will be compelled to arrange for the discontinuance of Pullman car service on such trains, as mentioned in paragraph 33 hereof, or else operate said cars at an additional substantial loss, in that the expense of operating such cars will greatly exceed the revenues derived therefrom. The Pullman Company and the plaintiff railroad companies are interested in maintaining sleeping car service on as many trains as possible for the accommodation of the traveling public. Further, the discontinuance of Pullman service unavoidably throws out of employment conductors, porters, mechanics, electricians, cleaners, and others.

26. The principal duties of a Pullman conductor are to collect Pullman fares, assign accommodations to passengers, make up diagrams, and give supervision of service on the cars. On a train carrying several Pullman cars, the services of a conductor are deemed necessary, but in operations where the volume of traffic is light, one Pullman employee on the car is able to do all that is required to maintain the service. The furnishing of Pullman service to railroad passengers in Pullman sleeping cars embraces the greater comfort and convenience of the special facilities of the sleeping car as distinguished from a railroad day coach. It embraces reserved and specially assigned accommodations, including the berth or room at night, comfortable seats and ample space in the daytime, clean and comfortable dressing rooms and toilet facilities, plenty of clean linen, having the berths prepared for occupancy at the beginning of the night and put away in the morning. Persons occupying accommodations in Pullman cars are rail-[fol. 28] road passengers and are entitled to the same attention from the train conductor as are coach passengers. The train conductor is the ranking authority on the train, and

in respect of the operation of the train, and the supervision, care and safety of all passengers, he is in charge of the entire train, including the Pullman cars; and all railroad and Pullman employees are subject to his orders. The rules governing the duties of Pullman employees require them to refer many matters of operation to the authority and discretion of the train conductor.

27. The Pullman Company exercises great care in the employment of its porters, in supervising their work, in maintaining, and in requiring from them, a high standard of service. They are selected for their intelligence, dependability and good character, and are required to render efficient and courteous service to passengers. The company through its superintendents, district superintendents, agents, inspectors and other supervisors, constantly supervises the work of porters. Such representatives frequently travel in the cars for the purpose of supervising the service enroute, and a record is carefully kept of the quality of service of all employees. The successful operation of The Pullman Company's business necessarily depends upon the company's maintaining a high quality of service to passengers. This quality of service is not diminished when Pullman conductor operation is not provided on cars where traffic conditions do not warrant or justify the operation of Pullman conductors. On trains where there is no Pullman conductor operation, the service rendered to passengers by The Pullman Company and by the railroad company is of the same character and quality as that accorded where Pullman conductors are operated. When a Pullman passenger boards the train and surrenders his Pullman ticket or pays his fare and is assigned his Pullman car accommodations, identically the same service is rendered, irrespective of whether The Pullman Company is represented by a Pullman conductor or by a Pullman porter. The Company assigns, and has made a practice of assign-[fol. 29] ing, to runs where Pullman conductor operation is unnecessary, experienced porters having records of many years of efficient and faithful service, and fully qualified to perform all of the duties assigned to them, including the duties that would be performed by a Pullman conductor if present. The average period of service with The Pullman Company of the porters assigned to the runs in Texas described in Exhibit "G" is 19 years. Some of them have

been in the service of the company for a period of 33 years, and none of them has been in the service for less than 12 years. No complaint has been made for courtesy to passengers or for failure of duty on the part of said porters on said runs during the time such method of operation has been in effect in the State of Texas.

28. The Pullman Company's method of conducting its operations and of serving its patrons in the state of Texas is similar to that employed generally by the company under similar conditions in other parts of the United States, and the facts do not warrant the conclusion that the quality of service rendered to its traveling patrons on the lines in Texas described in Exhibit "G," is inferior to that rendered on the lines that are accompanied by Pullman conductors.

29. While the Pullman porter attending a Pullman car without a Pullman conductor receives extra compensation, the additional amount is only a small portion of the conductor's salary that would be imposed upon the company as an additional expense by the challenged order. The average annual salary of a Pullman conductor is approximately \$2400.00. Compliance with the Railroad Commission's order would require the employment of 19 Pullman conductors at an annual expense to The Pullman Company of approximately \$45,000.00. This would be offset in part by elimination of the higher rate allowed the porters on the lines described in Exhibit "G." The net amount of added expense after allowing such offset item would be approximately \$33,000.00 per annum. Plaintiff railroad [fol. 30] companies are interested with The Pullman Company in maintaining the service as it is now maintained and in saving unnecessary expense. If the service provided by The Pullman Company in the lines described in Exhibit "G" is withdrawn, such withdrawal will substantially diminish the railroad passenger traffic and revenues on each of said lines.

30. The injury that would be suffered by the plaintiffs by having to conform with the requirements of an order like that contained in Exhibit "F" is not fully measured by the direct effect of the order on the Texas operations described in Exhibit "G." Passenger traffic conditions are constantly changing, and the necessity for changing schedules and for establishing or withdrawing trains arises from

time to time in consequence of changed conditions. Plaintiff railroads have in the past operated trains, in addition to those described in Exhibit "G," carrying Pullman cars without Pullman conductors, and if and when traffic conditions so require or make it desirable in the future they will, unless prevented by the commission's order, do so again. The right to institute and maintain such service and to call on The Pullman Company for its cooperation in that respect, and the right of The Pullman Company to respond, are valuable rights of which plaintiffs will be unconstitutionally deprived by the enforcement of said order. The property rights that will be destroyed by the enforcement of said order are of the value to each of the plaintiffs of a sum exceeding \$3000, and of said value to plaintiffs jointly.

31. The Pullman Company's operations are national in scope, and there are no conditions peculiar to the State of Texas that would make it necessary or proper to conform to such a policy in the State of Texas and not in other States. The company exercises the same high degree of care in selecting Pullman porters operating in the State of Texas that is used in selecting porters operating elsewhere. The standards for service in the State of Texas are equal to those [fol. 31] applied in other sections of the country. The Pullman porters in Texas and throughout the south are equal in qualifications to the Pullman porters operating in other portions of the country. No complaints have arisen in Texas from the operation of cars without Pullman conductors or from the conduct or services of Pullman porters on duty in such circumstances. The Pullman Company's experience shows that the services rendered to the public by the porters that have been selected for such operations in the State of Texas will compare favorably with the service maintained by the company in other sections of the country.

32. The operation of Pullman cars as integral parts of railroad trains is necessary to the conduct of the business of railroad passenger transportation. The railroads require sleeping car and other Pullman car accommodations for their passengers in order to meet the demands of the traveling public. The railroad companies do not own such equipment and for many years have contracted with The Pullman Company to supply such cars when needed by the

railroads to meet the requirements of travel over their respective lines. The Pullman Company to meet such demand has invested many millions of dollars in such equipment, and it cannot profitably make use of such investment except by furnishing the cars to the railroads for such operation in the way in which transportation has been conducted, in cooperation between the railroads and The Pullman Company, for many years. Thus the railroads are dependent upon The Pullman Company for the furnishing of the service that is now supplied by The Pullman Company; and The Pullman Company is dependent upon the railroads for the transportation service supplied by the railroads. The railroad companies are injuriously affected by any such order as Exhibit "F," affecting injuriously The Pullman Company and interfering with its operations; and The Pullman Company is injured by any such order whether directed and enforced against the railroads or directed in terms against the railroads and The Pullman Company.

[fol. 32] 33. The Pullman Company is not a common carrier and is not engaged in business in the State of Texas as a common carrier. The Railroad Commission of Texas has no jurisdiction over and no duties to perform in respect of The Pullman Company, and prior to the issuance of its said order of August 8, 1939, has not attempted to regulate said company in the conduct of its business, and has not asserted jurisdiction or authority over The Pullman Company or the conduct of its business in any matter whatsoever except on one occasion, in about 1907, and such attempt was enjoined by a court decree. Whether the defendants undertake to enforce the challenged order by threatening to prosecute penalty suits against the railroad companies or whether such action be taken also against The Pullman Company, The Pullman Company will at all events suffer irreparable injury since, in the absence of an injunction, the railroad companies will not haul the Pullman cars in their trains in violation of said order; and, in consequence, The Pullman Company will be compelled either to comply with the order or to curtail its service by withdrawing and discontinuing Pullman cars on those trains that do not carry Pullman conductors; and such curtailment would be dependent upon arrangements therefor between The Pullman Company and the railroads to whom Pullman cars, and employees for the provision of sleeping car service therein, are

furnished under contracts between said companies, plaintiffs herein.

34. Notwithstanding the want of power and authority to promulgate or to enforce the order here complained of, the Railroad Commission and its members, or a majority of them, and the Attorney General at their instance, will endeavor to enforce the same against the plaintiffs. If the plaintiffs fail, refuse or neglect to comply with said order, said defendants, unless enjoined by court decree, will endeavor to subject said plaintiffs to the penalties prescribed by Articles 6476 and 6477 of said Revised Statutes, authorizing [fol. 33] the collection of a penalty of not more than \$5,000.00 for failing, neglecting or refusing to obey any lawful requirement, order, judgment or decree made by the Railroad Commission. For relief against being subjected to such suits and excessive penalties plaintiffs have no adequate remedy at law.

35. As the basis for said order the Railroad Commission has assumed the right and power to interpret the contracts between the railroad companies and The Pullman Company and has affirmed in that connection that said contracts impose on The Pullman Company the duty of furnishing sleeping cars on each train supervised by a Pullman employee having the rank and title of Pullman conductor. The Commission, in the same connection, has in effect declared that the obligation of said contracts referred to has been breached and that said breach constitutes an abuse and an undue and unreasonable disadvantage, prejudice and discrimination, and has in effect set up the said contracts as so interpreted by the Commission as furnishing a standard to determine what constitutes an abuse or an unreasonable and undue disadvantage, prejudice and discrimination. In this connection plaintiffs show:

- (a) That the Legislature has not devolved upon the Commission the power to interpret said contracts and to attempt to enforce said contracts under any given interpretation.
- (b) The Legislature has not declared that a violation or breach of said contracts constitutes an abuse or an unreasonable and undue disadvantage, prejudice and discrimination that may be corrected by proper orders of the Railroad Commission. The Commission is without power or authority to adopt the said contracts as interpreted by it

as furnishing a proper basis for and measure of its regulatory powers in attempting to prevent abuses or unreasonable, extortionate or undue disadvantage, prejudice, and discrimination in rates.

[fol. 34] (c) That said contracts do not require that sleeping cars be in charge of and supervised by Pullman employees having the rank and title of Pullman conductors, and the interpretation placed upon the contracts by the Commission is wholly unwarranted.

(d) That the action of the Commission in attempting to enforce said contracts in the way attempted by said orders and under the unwarranted interpretation referred to constitutes, in effect, an impairment of the obligation of said contracts, in violation of that provision of the Constitution of the United States denying to any State ~~the power~~ to pass any law "impairing the obligation of contracts." (Sec. 10, Art. I.)

36. By reason of the facts hereinabove stated, the Commission's order herein challenged is invalid and unenforceable in this:

a. The order is not within the authority delegated to the Railroad Commission by any statute or law of the State of Texas.

b. If the statutes relied upon by the Railroad Commission as the source of authority for promulgating the order have been properly construed by the Commission, and if said statutes do attempt or purport to confer such authority, the statutes themselves are void and unenforceable in that they supply no standard, guide or criterion limiting the Commission's powers; and such statutes, as so construed, constitute an attempt to delegate to the Commission purely legislative power, which by Article II, Section 1, and by Article III, Section 1, of the Constitution of the State of Texas, has been granted exclusively to the Legislature.

c. In so far as the order is grounded in the Commission's authority to regulate transportation rates or to prohibit unjust discrimination or extortion in rates, it is void for the reason that it was issued without notice of hearing for such purpose. In no circumstances has the Commission [fol. 35] statutory power to issue such an order except after ten days' notice and hearing. The enforcement of such an

order, issued without notice and hearing, would deprive plaintiffs of their property and rights without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

d. The order is unjust, unreasonable, arbitrary, capricious and unsupported by any basis in fact, and bears no reasonable relation to the accomplishment of any purpose within the regulatory powers of the Railroad Commission or within the legitimate police power of the State. For that reason, plaintiffs are entitled to have it set aside pursuant to Articles 6453 and 6454, Revised Civil Statutes of 1925; moreover, for the same reason it is violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States in that it will deprive the plaintiffs of their property without due process of law.

e. The order is beyond the authority delegated to the Railroad Commission by any law of the State, and, being penal in nature, in connection with the oppressive penalty statutes mentioned above in this Complaint, is violative of the due process clause, Section 1 of the Fourteenth Amendment to the Constitution of the United States.

f. Said order as applied to the plaintiffs, and particularly in the operation of interstate trains, and in transporting and rendering service to interstate passengers, constitutes an unreasonable, oppressive, arbitrary and unnecessary burden upon and interference with interstate commerce, in violation of the commerce clause (Art. I, Sec. 8) of the Constitution of the United States; and is in conflict with the laws of the United States, and with valid orders of the Interstate Commerce Commission governing transportation of passengers in interstate commerce.

[fol. 36] g. Said order is invalid and unenforceable against the Trustee plaintiffs hereinabove named in that it constitutes an unlawful interference with the performance of their duties as officers of the United States Courts in the management, operation and control of the railroad properties in the custody of said courts, respectively; and is violative of the decrees of said courts in respect of the operation of said properties.

h. Said order works an unreasonable discrimination against the plaintiffs and their employees, and particularly

the employees of The Pullman Company, and thereby denies to the plaintiffs, particularly The Pullman Company and its employees, the equal protection of the laws, and deprives the plaintiffs and their employees of the liberty of contract, without due process of law, and against the equal protection of the laws; and thereby said order violates the due process and the equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

i. Said order, by requiring that the said The Pullman Company and the plaintiff railroad companies and Trustees have an employee on the cars referred to in said order having the rank and title of conductor, unreasonably, and without any necessity grounded in fact, arbitrarily and capriciously interferes with the right of The Pullman Company and the plaintiff railroad companies and Trustees to manage their respective businesses and to give to their employees such rank and title as to said companies may seem proper or desirable. Such unreasonable and unnecessary interference with such right deprives the said plaintiffs of their property and of the right to manage and use their property, without due process of law, and denies to them the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 37] j. The order is arbitrary, unreasonable, unconstitutional and void for each and all of the reasons elsewhere stated in this Complaint.

37. Premises considered, plaintiffs pray:

(1) That process be issued and served upon the defendants herein, in accordance with applicable statutes and rules of court. That service be had upon the defendant Railroad Commission of Texas by serving C. F. Petet, its Secretary, who resides in the City of Austin, in Travis County, Texas.

(2) That, pending the hearing and action on plaintiff's prayer herein for preliminary or temporary injunction, this Court, after hearing, upon notice of not more than five days, enter its temporary restraining order, restraining and prohibiting the defendants Railroad Commission of Texas, and the members of said Commission, and the Attorney General of Texas, and their agents, employees, and representa-

tives, from attempting to enforce against the plaintiffs, or any of them, the above described orders of the Railroad Commission as set forth in Exhibits "A" and "F," and from instituting or prosecuting any penalty suit or action of any kind against any of the plaintiffs herein for the violation of said orders.

(3) That upon a hearing after due notice, a preliminary injunction issue out of and under the seal of this Court, enjoining the defendants Railroad Commission of Texas and the members thereof, their representatives, agents, servants and employees, and the Attorney General of the State of Texas and his representatives, agents and employees from attempting to enforce against the plaintiffs, or any of them, the aforesaid orders of said Commission as set forth in Exhibits "A" and "F" of this Complaint, and from instituting or prosecuting any suit or suits against the plaintiffs, or any of them, for penalties, or otherwise, for the violation of said orders, or any part thereof. Plaintiffs pray that a [fol. 38] specially constituted district court be assembled pursuant to Section 266 of the Judicial Code, as amended (Sec. 380, U. S. Code), for the purpose of hearing and determining plaintiffs' motion herein for temporary or preliminary injunction; and for the purpose of conducting a final trial herein.

(4) That upon final trial and final hearing of this suit the preliminary injunction as prayed for herein be made permanent, and that a decree be entered herein setting aside, vacating and annulling the aforesaid orders of the Railroad Commission as set forth in Exhibits "A" and "F"; and that the defendants Railroad Commission of Texas and the members thereof and their representatives, agents, and employees, and the Attorney General of Texas and his representatives, agents and employees, be permanently enjoined from enforcing said orders against plaintiffs, or any of them, and from taking any steps whatsoever looking to enforcement of same, and from seeking in any way to penalize plaintiffs or any of them for violating or not obeying said Commission orders, or any part thereof.

(5) Plaintiffs pray for judgment against the defendants for costs of suit and for such other and further relief as the

evidence shall justify and as to this Court shall seem equitable in the premises.

R. S. Shapard, Attorney for plaintiff The Texas and Pacific Railway Company; Andrews, Kelley, Kurth & Campbell, Attorneys for plaintiffs Guy A. Thompson, Trustee, The St. Louis, Brownsville and Mexico Railway Company, Debtor; Guy A. Thompson, Trustee, International-Great Northern Railroad Company, Debtor; Guy A. Thompson, Trustee, The Beaumont, Sour Lake & Western Railway Company, Debtor; Guy A. Thompson, Trustee, San Antonio, Uvalde & Gulf Railroad [fol. 39] Company, Debtor; Baker, Botts, Andrews & Wharton, John P. Bullington, Attorneys for plaintiff Texas and New Orleans Railroad Company; Terry, Cavin & Mills, Attorneys for plaintiffs The Atchison, Topeka and Santa Fe Railway Company, Gulf, Colorado and Santa Fe Railway Company, and Panhandle and Santa Fe Railway Company; Charles C. Huff, Attorney for plaintiff Missouri-Kansas-Texas Railroad Company of Texas; Walker, Smith & Shannon, Attorneys for plaintiffs Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees, The Chicago, Rock Island and Pacific Railway Company, Debtor; A. H. Kiskaddon, Locke, Locke, Strc id & Randolph, Attorneys for plaintiff Berryman Henwood, Trustee, St. Louis Southwestern Railway Company of Texas, Debtor; Allen & Gambill, Attorneys for plaintiff St. Louis, San Francisco and Texas Railway Company; F. H. Moore, Attorney for plaintiff The Kansas City Southern Railway Company; Thompson & Barwise, Fred L. Wallace, Attorneys for plaintiff Fort Worth and Denver City Railway Company; (S.) Claude Pollard (Address: Austin, Texas), Attorney for all plaintiffs excepting The [fol. 40] Pullman Company; Lowell M. Greenlaw, Herbert S. Anderson, Charles L. Black, John W. Stayton, Ireland Graves, (S.) Ireland Graves (Address: Austin, Texas), Attorneys for plaintiff The Pullman Company.

*Duly sworn to by D. A. Crawford. Jurat omitted in printing.*

## [fol. 41] Exhibits to Amended Complaint

## EXHIBIT "A"

## Passenger Circular No. 164

By the Railroad Commission of the State of Texas Relating to the Safety, Care, Comfort, Convenience, Proper Accommodation and Transportation of Passengers on Pullman Cars within the State of Texas.

Pursuant to the authority vested in the Railroad Commission of Texas by the Statutes as interpreted by our courts, and particularly in the case of Missouri, Kansas & Texas Ry. Co. of Texas vs. State, 275 SWR 673 (681) wherein the court said:

"The Railroad Commission of Texas is a constitutional board or tribunal created for the specific purpose of supervising and controlling the operations of railroads within this state. The duty of its members is to become acquainted with and to know the transportation problems and conditions generally as to each railroad. Railroad regulation in every aspect is within its jurisdiction. Sovereignty granted it power to hear and determine all subject-matter of railroad regulation. Its powers are far-reaching and important," \* \* \*

And by virtue of the interpretation by the courts of our state as to the degree of care required of carriers as to passengers, wherein the courts have used such statements as:

"A very high decree of care and watchfulness." La. Ry. & Nav. Co. vs. Smith, 285 SW. 1104; T. & P. Ry. Co. vs. Story, 83 SW. 852.

[fol. 42] "A high degree of care." M. K. & T. vs. Brown, 135 SW. 1076.

"A highest degree of care." Galveston H. & S. A. Ry. Co. vs. Bibb, 172 SW. 178.

The Commission is of the opinion that it is necessary in the public interest of citizens of this state who ride in Pullman cars and pay an extra fare therefor in addition to the

regular charge for riding in the coaches as provided for passenger service, that those citizens riding in Pullman cars are entitled to the protection, safety and convenience of having a Pullman conductor in charge of said car while said citizens are riding as passengers thereon.

It Is, Therefore, Ordered, Adjudged and Decreed that from and after the effective date of this order no sleeping car shall be operated on any line of railroad in the State of Texas when occupied by passengers holding the proper transportation for the accommodation of such cars, unless such cars are continuously in the charge of an employee or an authorized agent of the firm or corporation owning or operating the same having the rank and position of Pullman conductor.

The use of the terms "firm" or "corporation" as employed in the next preceding paragraph hereinabove is meant to include all companies as defined by Article 6479 Revised Civil Statutes of Texas.

It Is Further Ordered that this order shall be and become effective on September 1, 1939.

Done and ordered by the Railroad Commission of the State of Texas in Austin on this 8th day of August, 1939.

Railroad Commission of Texas, Lon A. Smith,  
Chairman, Ernest O. Thompson, Commissioner,  
Jerry Sadler, Commissioner.

Attest: C. F. Petet, Secretary.

[fol. 43]

**EXHIBIT "B"**

Docket No. 3669-R

By the Railroad Commission of the State of Texas Relating to the Safety, Care, Comfort, Convenience, Proper Accommodation and Transportation of Passengers on Pullman Cars Within the State of Texas

Austin, Texas, August 19, 1939.

It is Ordered by the Railroad Commission of Texas that notice be, and the same is hereby given to the Pullman Company as well as to all other interested parties, that the Commission will on August 31, 1939, in its Hearing Room at the

Capitol Building in Austin, take up and consider the matter of operating Sleeping cars on any line of railroad in the State of Texas when occupied by passengers holding the proper transportation for the accommodation of such cars, unless such cars are continuously in charge of an employee or an authorized agent of the firm or corporation owning or operating the same having the rank and position of Pullman conductor.

The Commission will, at said hearing, hear all facts and statements that may be presented pertaining to the matter above set forth and will, in pursuance of said hearing and of the facts there presented and the conditions then shown to exist, enter such order or orders in the premises and within the scope of the proposition involved as, in its opinion may be just, proper and equitable to all interests concerned.

It is further ordered that the effective date of Passenger Circular No. 164, issued by the Railroad Commission of Texas on August 8, 1939, be and it is hereby extended to September 15, 1939.

[fol. 44] Railroad Commission of Texas, by Lon A. Smith, Chairman, Ernest O. Thompson, Jerry Sadler, Commissioners.

Attest: C. F. Petet, Secretary. (Seal.)

**EXHIBIT "C"**

Docket No. 3669-R

By the Railroad Commission of the State of Texas Relating to the Safety, Care, Comfort, Convenience, Proper Accommodation and Transportation of Passengers on Pullman Cars Within the State of Texas

Austin, Texas, September 6, 1939.

It appearing that the transcript of the record of the hearing that was held by C. F. Petet, as examiner, on August 31, and September 1, 1939, pursuant to the Commission's order of August 19, 1939, has not been completed; and it further appearing that after the transcript shall have been completed and delivered to the members of the Commission, additional time will be needed to consider the transcript,

it is further ordered by the Railroad Commission of Texas that the effective date of Passenger Circular 164 issued by the Commission on August 8, 1939, is further postponed to October 5th, 1939.

Railroad Commission of Texas, by Lon A. Smith, Chairman; Ernest O. Thompson, Commissioner; Jerry Sadler, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

[fol. 45]

#### EXHIBIT "D"

Docket No. 3669-R

By the Railroad Commission of the State of Texas Relating to the Safety, Care, Comfort, Convenience, Proper Accommodation and Transportation of Passengers on Pullman Cars Within the State of Texas

Austin, Texas, September 3, 1939.

In order to provide more time for examination of the record in the above numbered and entitled cause, it is ordered by the Railroad Commission of Texas, on its own motion, that the effective date of Passenger Circular No. 164, issued August 8, 1939, postponed to September 15th, and subsequently postponed to October 5, 1939, be and the same is hereby further postponed to November 1, 1939.

Railroad Commission of Texas, by Lon A. Smith, Chairman; Ernest O. Thompson, Commissioner; Jerry Sadler, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

#### EXHIBIT "E"

Docket No. 3669-R

By the Railroad Commission of the State of Texas Relating to the Safety, Care, Comfort, Convenience, Proper Accommodation and Transportation of Passengers on Pullman Cars Within the State of Texas

Austin, Texas, October 27, 1939.

In order to provide more time for examination of the [fol. 46] record in the above numbered and entitled cause,

it is Ordered by the Railroad Commission of Texas, on its own motion, that the effective date of Passenger Circular No. 164, issued August 8, 1939, postponed to September 15, October 5, and November 1, 1939, respectively, be and the same is hereby further postponed to November 15, 1939.

Railroad Commission of Texas, by Lon A. Smith,  
Chairman; Ernest O. Thompson, Commissioner;  
Jerry Sadler, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

**EXHIBIT "F"**

Railroad Commission of Texas

Docket No. 3669-R

**In Re Order by the Railroad Commission of Texas Relating to the Safety, Care, Comfort, Convenience, Proper Accommodation, Charges, Fares and Transportation of Passengers on Sleeping Cars and Pullman Cars Within the State of Texas, and to Prevent Abuses, Unjust Discrimination and Extortion in Rates**

Austin, Texas, November 4, 1939.

Order amending passenger circular No. 164, issued by the Railroad Commission of Texas on the 8th day of August, 1939. After proper notice to all interested parties as [fol. 47] to the time and place of said hearing, then all parties at interest appeared by their respective attorneys and evidence was offered by all parties and after a full, final and complete hearing thereon, the order of August 8th was amended as hereinafter provided relating to the safety, care, comfort, convenience, proper accommodations, charges, fares and transportation of passengers on sleeping cars and Pullman cars within the State of Texas, and to prevent abuses, unjust discrimination and extortion in rates.

**Ordered**

On the 31st day of August, 1939, came on to be heard the above entitled and numbered cause, whereupon the

Commission proceeded to examine the notice of the hearing and found:

(1) That an order had been issued by this Commission on the 8th day of August, 1939, on its own motion, which provided in part as follows:

"No sleeping car shall be operated on any line of railroad in the State of Texas when occupied by passengers holding the proper transportation for the accommodation of such cars, unless such cars are continuously in the charge of an employee or an authorized agent of the firm or corporation owning or operating the same having the rank and position of Pullman conductor."

and that the effective date of said order was fixed as of September 1, 1939.

(2) That upon request of the Pullman Company, through its attorney, a notice was issued in the manner and form provided by law, notifying all parties at interest that a full and complete hearing would be held in Austin, Texas, in the Hearing Room of the Railroad Commission on the 31st day of August, 1939, at which time all parties interested would be permitted to offer such evidence and present such facts as they may deem material to the issues involved.

(3) That the effective date of passenger circular No. 164 was extended until the 15th day of September, 1939, and [fol. 48] upon request of counsel for the parties at interest, the effective date of said order has been postponed from time to time, the last extension thereof being until the 15th day of November, 1939.

(4) The Commission further finds that on the 31st day of August, 1939, at 10 o'clock A. M. in the Hearing Room of the Commission in Austin, Texas, the following appearances were made:

Mr. Ireland Graves, of the law firm of Black, Graves & Stayton, of Austin, Texas,

Mr. L. M. Greenlaw, general counsel of the Pullman Company, Chicago, Illinois,

Mr. H. S. Anderson, assistant general solicitor of the Pullman Company, of Chicago, Illinois,

All on behalf of the Pullman Company.

Mr. Claude Pollard, Austin, Texas, representing all Texas railroads.

Culbertson & Morgan, attorneys, Fort Worth, Texas, appearing for the Order of Sleeping Car Conductors.

The Commission thus finds that all of the parties interested in the subject matter have been duly notified for the time and in the manner provided by law and that all of said parties entered an appearance in this cause and, with all parties having announced ready, the Commission proceeded to hear the oral testimony of seventeen witnesses, some of whom were offered by the railroad companies, the Pullman companies and the other parties at interest, as well as documentary evidence, and after a full, final and complete hearing of evidence, which lasted for two days, and after argument of counsel, the Commission being fully advised in the premises Finds:

[fol. 49] (1) The Pullman Company has made agreements with the railroads of Texas by the terms of which it is obligated to furnish standard sleeping and parlor cars, properly equipped and acceptable to the railroad company, sufficient to meet the requirements of travel over the lines of railroads operated by said companies in Texas and under such contract it has the exclusive right to operate pullman cars and sleepers over the railways in Texas, except that the railroads should have the right to operate their own parlor cars, either exclusively or in addition to the parlor cars furnished by the Pullman Company.

(2) The contracts between the Pullman Company and the railroads provide that the Pullman Company shall have the right to collect from the occupants of its cars for the use of seats, berths and rooms therein such fares as shall be charged on competing lines of railroads.

(3) While the various contracts differ as to the compensation the railroads are to receive from the Pullman Company for this exclusive right to furnish such cars and services, they all provide in substance that all receipts from operations above a given sum per car per annum shall be divided between the railway company and the Pullman Company in various and graduated proportions. The railroad companies are thus directly interested in the charges made by the Pullman Company for the use of its seats and services to the extent of sharing in the profits over and

above a given amount per car per annum and this indirectly amounts to a tariff charge or additional compensation to the railroads for the privilege of riding in cars and obtaining services rendered by the Pullman Company under such contracts. All of this is in addition to the extra fare required to be paid by a passenger before he can have the privilege of purchasing a seat in and the accommodations provided by the pullman cars.

[fol. 50] (4) The contracts between the Pullman Company and the railroads require that the Pullman Company shall provide suitable employees for collecting fares and providing the usual sleeping and parlor car service and such employees shall be subject to the rules of the railroad company governing its own employees and be subject to removal or transfer on complaint of the railroad companies because of unsatisfactory service, but in no case should they be deemed or taken to be the servants or employees of the railroad company.

(5) In addition to the employees to be furnished who would be subject to the rules of the railroad company, the contracts further provide that the Pullman Company, in order to maintain service acceptable to the railroad companies and the traveling public, should furnish agents or inspectors to supervise the conduct of employees, cleanliness of cars, etc., while enroute. It has been the custom for the Pullman Company to furnish Pullman conductors to supervise the conduct of employees and the cleanliness of the cars, etc., while enroute, and they have not furnished any other agent to supervise such conduct of employees and cleanliness of the cars except Pullman conductors. In recent months, the Pullman Company has failed and refused to furnish any agent or agents to supervise the conduct of its employees or the cleanliness of the cars while enroute but instead in a great many instances, they have left only a colored Pullman porter in charge of such cars, without any kind of inspection or supervision of the employees and cleanliness of cars while enroute. The same charge is made for the seat and other accommodations in the Pullman cars where there is no such supervision provided and only a colored porter in charge as is made for the same accommodations in cars in which supervision is provided by Pullman conductors. Among other runs on which such colored Pullman porter is the only person in charge of such

cars is the Missouri-Kansas-Texas Railroad Company of Texas from San Antonio to Waco, over which there is a [fol. 51] heavy traffic and on which many students of the University of Texas and other colleges and universities ride, both boys and girls, and which carries football teams and other athletic teams from such colleges and universities. These groups are sometimes difficult to control and it would be impossible for a colored porter to keep proper order and decorum and provide the usual, customary and necessary safety, comfort, convenience and accommodation for the passengers on the sleeping cars and other pullman cars.

(6) Under the contracts, the Pullman Company is to receive its pay based upon the average receipts per car per annum of all of the pullman cars operated over all of the lines of the respective railroads and not for any given line or lines or isolated or localized parts thereof, so that the cost of any particular operation is spread over the whole of the lines of the respective carriers, and in some instances the Pullman Company is guaranteed a minimum return of a fixed sum per car per annum.

(7) The railroads of Texas are charging the maximum sum allowed by the Statutes of this state for passengers who desire to ride in sleeping cars or pullman cars, namely 3¢ per mile. This charge is made and collected by the railroad companies. In addition thereto, sleeping car companies or the Pullman Company collects an extra fare for the privilege of riding in pullman cars. Lower rates are charged by the railroads for the privilege of riding in the day coaches or chair cars. The schedule of rates or fares as collected by the railroad companies is common between two points regardless of the railroad that may haul the traffic. The same rates are charged by the railroad company and the same additional toll is exacted by the Pullman Company when a pullman conductor is in charge of the pullman cars as when a negro porter is in charge of the pullman cars.

[fol. 52] (8) The Commission finds from the evidence that there are seventeen separate and distinct operations on the various railroads in Texas without pullman conductors in charge of pullman cars. The Commission further finds that all other runs other than the seventeen operations disclosed by the evidence, do have a pullman conductor in charge of

the pullman cars; that the failure to have Pullman conductors on the seventeen operations is a discrimination against the passengers who ride on those particular runs in that all other operations of Pullman cars do have Pullman conductors; that in every instance the same rates and fares are exacted by the railroad companies and the Pullman Company and in one instance the services of a Pullman conductor are offered and in the other instances enumerated, namely, the seventeen operations, such services are not rendered.

(9) In this connection, the Commission further finds that old people, women, and children who ride as passengers and pay the additional fare for the privilege of riding in Pullman cars are entitled to the services and protection of a Pullman conductor, and the failure on the part of the railroad companies and that of the Pullman companies to thus provide such service and protection to such passengers is an abuse, a disadvantage and an undue and unjust discrimination against all passengers who ride on any one or more of said seventeen operations where Pullman conductors are not used.

(10) The Commission finds that the contracts as made between the Pullman Company and that of the railroad companies as hereinabove referred to in these findings were made for the use and benefit not only of the railroads and the Pullman Company as to their own financial problems, but likewise for the use and benefit of third persons, namely, passengers who are willing to pay the fare charged by the railroad company and that of the Pullman Company for the privilege of using such service; that from the evidence of [fol. 53] the witnesses brought before the Commission who were paying passengers on Pullman cars, the Commission finds that the passengers in Texas who use the Pullman cars pay the extra fare because they are paying for, among other things, the services of a Pullman conductor.

(11) That to allow the railroad companies to exact the extra rate to ride in Pullman cars and then to allow the Pullman Company to exact an additional fare over and above said extra rate per mile, which charges and rates are higher than that charged by the railroad companies for the privilege of riding as a passenger in other parts of the train, and then for the railroad company not to provide

the services and protection to the passengers in a Pullman car of a Pullman conductor, is an abuse, and undue and unreasonable prejudice and discrimination.

(12) The Commission further finds from the evidence offered by the railroad companies and from the evidence offered by the Pullman Company that the only objection to passenger circular No. 164 was an economic one and nothing more.

(13) Pullman conductors are especially trained by the Pullman Company to render a special type service to passengers riding in the Pullman cars. Each conductor is furnished with a book of instructions setting forth in detail the requirements of a conductor, together with special bulletins which are issued from time to time as to the safety, protection, care and convenience of the passengers. Special schools of instructions are conducted for the benefit of Pullman conductors quarterly to keep the conductors advised from time to time of additional safety devices and of all physical improvements on the cars, and such new and additional services as may be possible to be rendered to the passengers by the conductors from time to time; that such books of instructions and bulletins are furnished to only Pullman conductors and the schools of instructions are attended only by Pullman conductors; that the same [fol. 54] are not attended by Train Conductors or Pullman porters and that the Pullman conductor must have such training and such special qualifications before he is qualified to serve as a Pullman conductor; that the duties of a Pullman conductor are many, and the Commission finds that some of their duties are as follows:

(a) See that the Pullman cars are properly cooled or properly heated for the reception of passengers prior to the time that the cars may be opened to receive passengers.

(b) To require all porters to be in proper uniform.

(c) To regulate the temperature, both of the air-conditioning device and the heat equipment, and the Commission finds in connection with the air-conditioning that such equipment is relatively new, having been in use only a few years on the railroads in Texas; that the proper regulation thereof is a matter of grave concern to the health, comfort and convenience of the passengers on Pullman cars; that

the Pullman conductor is specifically charged with the responsibility of regulating the same and that he receives special instructions in the operation of the same.

(d) The Pullman conductor is required to give special attention and care to old people, children, sick persons and college girls, as well as other types which require personal service and who are committed to his special care and attention; that often-times old women who are blind and unable to care for themselves are placed on the train under the care of the Pullman conductor and it is necessary for him to attend to their every need and want, to require their meals to be served at their seat and see that they reach their proper destination, provide them with wheel chairs and such other service as may be necessary. Likewise, children of tender years unable to care for themselves are committed to the care of the Pullman conductor and that it is his duty to properly attend children while enroute and to deliver them safely to their relatives, friends or proper [fol. 55] authorities at the end of their trip; that frequently the Pullman conductor is required to administer first aid treatment for passengers who become ill and when necessary it is his duty to make the necessary arrangements to summon a physician to attend such passengers. Special duties are required of the Pullman conductor in the event of a wreck. He must attempt to remove all passengers from the car to a place of safety and to minister to their injuries, if any, summon medical attention and perform every service that he can for their safety, convenience and comfort.

(e) It is his duty to furnish information about schedules of connecting lines and all other means of transportation such as boats, airplanes and buses.

(f) Crippled or deformed persons, mentally or physically, are committed to his special care and attention and it is his duty to personally attend to their needs.

(g) It is the duty of the Pullman conductor to maintain proper decorum in the cars and to supervise all of the Pullman cars on the train. He must handle all disorderly conduct and prevent excessive drinking, boisterous talking and undesired attentions between passengers.

(h) When switching is being done and the Pullman cars are separated from their chair cars, it is the duty of the conductor to see that the tail gates are properly erected and to prevent passengers from falling and becoming injured, and possibly fatally injured.

(i) It is his duty to see that all passengers are assigned to the proper berths; that the cars are kept clean at all times; and it is his duty to supervise the pullman porters and see that they carry out the duties required of them.

(j) Pullman conductor collects tariff rates for a seat in the Pullman car in the day time and for a berth at night. He does not permit any passenger to ride in the Pullman car unless such passenger has a pass or has paid the rail-[fol. 56] road transportation required to ride in Pullman cars, and in addition thereto the tariff required to ride in Pullman cars.

(k) The Pullman conductor and the Pullman porter are furnished keys to the Pullman cars but such keys are not furnished to the train conductor.

(14) The extra fare per mile charged by the railroads to passengers who ride in the sleeper car is to enable the passenger to enjoy the services, safety, convenience and comfort of the Pullman sleeping cars as contracted to be furnished to the traveling public in the various contracts between the railroads in Texas and the Pullman Company. One of the features contributing to such services, safety, convenience and comfort is the supervision of the work of the employees and the cleanliness of the cars while enroute, which is usually done by a Pullman conductor. The leaving of such sleeping cars and the operation and cleanliness thereof to negro porters with no agent or inspector to supervise the same while the cars are enroute is in violation of the contracts made for the benefit of the traveling public and the passengers who desire to pay the added fare to obtain the benefits of such contracts and such added safety service, comfort and convenience; and is to the undue and unreasonable disadvantage and prejudice of such passengers. Such additional fare so charged by the railroads for the privilege of claiming the benefits of such contracts and the added safety, comfort and convenience of having the same supervised while the cars are enroute by a Pull-

man conductor or other agent or inspector of the Pullman Company, are unfair, unjust and undue and unreasonable discrimination and prejudice and to the unreasonable disadvantage of the passengers who pay the same and do not obtain the service, safety, convenience and comfort of a Pullman conductor in supervising the work of the employees and the cleanliness of the cars enroute in accordance with such contracts. The traveling public by reason of the con-[fol. 57] tracts and the supervisory services of Pullman conductors in such cars purchase such accommodations and pay the extra fare and cost thereof to receive such benefits thereof and have the right to expect and receive the same.

(15) The Commission finds the duties of a Pullman porter are:

- (a) To load and unload all baggage.
- (b) To keep the car clean, to shine shoes and to do any other janitor work which may be required.
- (c) To provide passengers with tables when requested.

(16) The Commission further finds from the evidence that the porters on Pullman cars are negro men.

(17) The Commission further finds that if negro porters are placed in charge of the Pullman cars when the service of a conductor is dispensed with that there is imminent danger of insults to the lady passengers on the Pullman cars and that such condition exists in the seventeen operations by the Pullman Company where they do not use conductors, as hereinabove referred to, and that the same constitutes an abuse and an undue and unjust disadvantage and discrimination; that from the evidence of the lady passengers who testified before this Commission, the womanhood of Texas entertains a fear of serious bodily injury or personal attack from a negro man and that to subject them as passengers in Pullman cars to the service where there is only a negro porter in charge would be to such passengers, as well as all other passengers, an undue and unjust discrimination, prejudice and abuse.

(18) The Commission further finds that the disorderly conduct among passengers which sometimes occurs on Pullman cars in Texas can not properly be met or handled by a Pullman porter; that every Texan, both man and woman,

resents any interference or instructions from a negro man or from a negro porter, and the Commission finds that a [fol. 58] negro porter would not attempt to and could not discipline a passenger on a car nor would he attempt to prevent any misconduct in such car and if the same should be indulged in to the humiliation of the other passengers on such car, that the same could not be prevented nor quieted by a Pullman porter, while the same could be properly handled and quieted by a Pullman conductor and therefore the same would be an abuse and an undue and unjust prejudice, discrimination and disadvantage.

(19) The Commission further finds that the custom is developing in the State of Texas by the railroads and the Pullman companies to place negro porters in charge of the Pullman cars, and to dispense with the service of the Pullman conductors; that during the year 1939, the Forms as prepared and issued by the Pullman Company where there is a negro porter in charge, have been changed from "Conductor in Charge" to the present form "Porter in Charge" and that such forms are in the nature of a receipt given to passengers to buy a seat or a berth on the Pullman cars; that the practice of taking off of the trains the Pullman conductors and substituting in their place the Pullman porters, and requiring such porters to perform their own duties, and in addition thereto, the duties of the conductor, is unfair, unjust and a discrimination, prejudice and disadvantage to the passengers riding on the Pullman cars in Texas.

(20) That such changes from "conductor in charge" to that of "porter in charge" have been made during the year 1938 on the runs by the Missouri-Kansas-Texas Railroad Company of Texas from Fort Worth to San Antonio and from San Antonio to Waco, which trains serve the cities of Fort Worth to San Antonio and all intermediate points where there is located universities and colleges such as The University of Texas, Baylor University, St. Mary's, Texas Christian University and Texas Wesleyan College and others, and where students and their families travel to and from such institutions, and in this connection the Com-[fol. 59] mission further finds from the testimony offered by the Pullman Company that definite instructions are given to the negro porters to advise all passengers that he is in charge of the car and that they are so trained and in-

structed when they use porters in charge for such porters to advise the traveling public and tell them that he is in charge of such cars, and that in such instances the porter is expected to perform not only the janitor service of a porter but also he is required by the Pullman Company and the railroad to perform all services of a Pullman conductor.

(21) The Commission further finds that in most instances the chair cars, as provided by the railroad companies offer to its passengers the same degree of safety and convenience, including air-conditioning, as that offered by the Pullman Company and that in addition thereto the chair cars as provided by the railroad company always offer the service of a train conductor and brakeman, and in many instances that of a train porter; that the Pullman cars in nearly every instance are attached to the main train and are placed on the rear of the train to which Pullman cars the train conductor does not have a key; that the Pullman cars are thus isolated from the other parts of the train; that the passengers on the chair cars are not permitted to go into the Pullman cars and that the protection, care, attention and service thus rendered to the passengers on the chair car is superior to and exceeds the protection, care, attention and service in a Pullman car when there is no Pullman conductor in charge, notwithstanding the railroad companies exact a higher fare to ride in Pullman cars and the Pullman Company exacts an additional fare therefor. Therefore, this constitutes an abuse, an undue and unjust discrimination, prejudice and disadvantage. In this connection, the Commission further finds from the evidence that the passengers who ride on the trains and pay the fare [fol. 60] therefor prefer to ride in the chair cars where they have the protection, care, safety and service of a train conductor to that of riding in the Pullman car where there is a porter in charge, regardless of the rate which might be charged.

(22) The Commission further finds from the testimony of citizens of this State who voluntarily appeared to testify and who were not associated with or connected with any railroad or sleeping car company that

(a) Such witnesses understand that they were required to pay an extra railroad fare to ride in a Pullman car, over and above the fare required to ride in the chair cars on

the same train; that in addition to this extra fare they were required to pay an additional charge of tariff rates for the privilege of riding in the Pullman cars; that such extra fare was paid because of the convenience, safety, protection and service in the Pullman cars, including the services of a Pullman conductor.

(b) The Commission further finds from the testimony of the witnesses who frequently ride on the trains and on the Pullman cars that such passengers expect to find both a Pullman conductor and Pullman porter on the Pullman cars; that such passengers understand that they are paying extra for such service and that they do look exclusively to the Pullman conductor for protection, care and service while they are riding as passengers on the Pullman cars.

(c) The Commission finds that the experience of such passengers with the porter in charge has been unsatisfactory; that the construction of the Pullman cars is such that only little curtains protect the passengers one from another, and that there is a long aisle down the center of the Pullman cars, and the seats and berths are constructed alongside of the aisle, and each berth is separated from the other berths only by these small curtains, and that the lady [fol. 61] passengers who occupy such expect and are entitled to the protection, care and service of a Pullman conductor while they are thus traveling, and that to deny them such protection, care and service is an unjust discrimination on the part of the railroads and the Pullman Company.

(d) The Commission further finds that women prefer not to ride in Pullman cars unless there is a Pullman conductor in charge; that they are unwilling to subject themselves to the supervision of a negro porter and that the practice on the part of the railroad companies and that of the Pullman companies in having the porter in charge is unfair, unjust and unreasonable, so far as these women passengers are concerned.

(e) The Commission further finds from the testimony that the mothers of small children in Texas are unwilling to permit their children to ride in Pullman cars where only negro porters are in charge; that they entertain a fear that the children would not be cared for nor protected; that the

children of Texas are entitled to the comfort, convenience and service of Pullman cars and that to deny them of this service by failing to provide the necessary employees over and above that of a porter would be an unjust discrimination.

(23) That the rules promulgated by the railroad companies of Texas provide that the conductor shall have general direction and government of the passenger train, but notwithstanding such rule, in some instances, the train conductor never goes into the Pullman cars while the same are in transit and that he spends his time in the chair cars and never attempts to exercise any supervision over sleeping cars unless called to do so by the Pullman conductor.

(24) The duties of a train conductor are numerous. He is required to receive and execute all orders relating to the movement of the train; he must attend to the loading and unloading of all passengers as well as all baggage, mail and [fol. 62] express; that the many duties required of the train conductor consume all of his time and that he does not have time to supervise the Pullman cars on the trains; that many of the trains in Texas are very long; that the regular equipment on one of the trains consists of 18 cars and some times extra cars; that he must familiarize himself with general orders and bulletins issued by the separate officers from time to time and see that his train is properly placed in the station; that he receives orders and clearances, looks after baggage, mail and express, and see that same has been properly loaded from the trucks to the cars, and that loading has been completed; that he furnishes the engineer with a copy of orders, as well as the brakeman or flagman; that he reads the same to the train porter; that he rides back of the train if the train backs in or out of the station; that after leaving the station he lifts the transportation by starting in the Jim Crow car and works back; that in some cases he goes into the Pullman cars and lifts the train transportation; that he also looks out for the trains and sees that the orders are fulfilled; that meeting points are made and that the stations are not passed ahead of time; that he sees that the Board is clear; that it is his duty when trains are meeting each other to see that his train is on the proper track. He is required to get off the train at every local station to assist passengers, no matter how big or how little the town may

be. He has supervision over the brakemen and porters. He receives additional instructions from time to time at various stations as the train passes on its journey.

(25) That it is impossible for the train conductor to perform all the duties required of him in the operation of the train and likewise perform the additional duties of a Pullman conductor. That it is the custom for the train conductor to require the Pullman conductor in many instances [fol. 63] to collect the train tickets and to deliver them to the train conductor or send them to him by the train porter, and in these instances, the train conductor never goes into the Pullman cars at all. In other instances the train conductor simply collects the tickets in the Pullman cars and never returns thereto unless upon special request of the Pullman conductor; that the train conductor never renders any service to the passengers on the Pullman cars, except when he is specifically requested to do so by the Pullman conductor.

(26) The Commission finds from all of the evidence introduced that the many duties required of a train conductor demand all of his time; that as a practical matter he does not have time to render any service to the passengers in the Pullman cars and as a matter of fact the train conductor does not render any service of any character to passengers on the Pullman cars in Texas. In this connection, the Commission further finds that when the Pullman cars are being operated without the services of a conductor that the passengers on Pullman cars are thus deprived of the services and protection of a conductor and that the passengers riding in the chair cars who have paid less fare to ride therein do have the services of a white conductor; that the same constitutes an abuse and unjust discrimination.

(27) The Commission further finds from the testimony offered that on different occasions Pullman porters while on duty proceeded to drink excessively and become intoxicated, thereby rendering themselves unable to perform the janitor work required of a Pullman porter, and certainly unable to perform the duties of a Pullman conductor.

(28) The foregoing acts and things done and performed by the railroads of Texas and the Pullman Company are in violation of Articles 4005, 4013 and 6474, Revised Statutes 1925, which provide that such railroads and sleeping

[fol. 64] car companies shall not collect a fare or compensation for any greater or less rate or amount than is charged all persons under substantially the same circumstances and conditions.

(29). The foregoing acts and things done and performed by the railroads of Texas and the Pullman Company are unjust and unreasonable and amount to unjust and unreasonable charges for the services rendered by a colored porter alone in charge of a sleeping car. And such service is inadequate to provide for the proper comfort, safety and convenience of the passengers therein and does not meet the requirements of the traveling public and the agreement between the railroads and the Pullman Company.

It Is, Therefore, Ordered, Adjudged and Decreed that it is necessary in order to correct the abuses aforesaid and eliminate the existing unreasonable and undue disadvantage, prejudice and discrimination to such described traffic that the services, safety, convenience and comfort for which such extra fare is paid and as contracted between the railroads and the Pullman Company be provided, and that failure to provide it is to the unreasonable and undue disadvantage and prejudice to and a discrimination against the said passengers as described, and would be charging a fare for which contracted services are not performed.

It Is Further Ordered, Adjudged and Decreed that if such services as contracted to be provided should be furnished by having all sleeping cars on each train supervised by a Pullman conductor while enroute as is the usual and general practice of the Pullman Company, that such abuse will be corrected and prevented and such unreasonable and undue disadvantage, prejudice and discrimination to such named traffic be eliminated and prevented in the future.

[fol. 65] It is Further Ordered, Adjudged and Decreed that no extra fare shall be charged or collected by the railroads from passengers for the privilege of occupying Pullman sleeping cars unless the facilities and employees and supervision of the work of employees and cleanliness of cars is provided while cars are enroute, all as provided by the terms of the respective contracts with the Pullman Company, are fully provided.

It is Further Ordered, Adjudged and Decreed that no extra fare or charge shall be made by the railroads or The

Pullman Company for the accommodations of passengers in a Pullman sleeping car, as provided for by the various contracts between the railroads and the Pullman Company; in which fare or charge the railroad in question will receive or have any share or which may ultimately contribute to its having or receiving any remuneration whatsoever unless the employees of Pullman cars and the cleanliness thereof are supervised while enroute as provided in said contracts.

It is Further Ordered, Adjudged and Decreed that the supervision of the work of such employees in Pullman cars and the cleanliness thereof while enroute as has been rendered by Pullman conductors and as now set out in the Book of Instructions to Pullman conductors now furnished to such Pullman conductors by the Pullman Company and introduced as evidence in this case is such supervision as will meet the requirements of such contracts.

It is Further Ordered, Adjudged and Decreed that no sleeping car shall be operated on any line of railroad in the State of Texas when occupied by passengers holding the proper transportation for the accommodation of such cars, unless such cars are continuously in the charge of an employee or an authorized agent of the firm or corporation owning or operating the same having the rank and position of Pullman conductor.

[fol. 66] It is Further Ordered, Adjudged and Decreed that no railroad operating in the State of Texas shall discriminate against passengers in the Pullman cars as distinguished from the passengers in the chair cars.

It is Further Ordered, Adjudged and Decreed that no railroad in Texas shall allow any sleeping car or parlor car to be operated or pulled over its lines for the use and occupancy of paying passengers of such railroads unless the employees and services and the supervision of such employees and the clearness of cars are furnished, all as provided in the contracts between the Pullman Company and the railroads of Texas made for the benefit of the traveling public.

It is Further Ordered, Adjudged and Decreed that all railroad companies, receivers or trustees operating lines of railroads in Texas be and they are hereby required to furnish like service on each sleeping car operated over their lines of railway in Texas as that provided by said railway company, receiver or trustee for any other sleeping car so operated.

It is Further Ordered, Adjudged and Decreed that all orders, rules and regulations that are in conflict with this order are, to the extent of such conflict, expressly repealed or amended to conform to this order.

It is Further Ordered, Adjudged and Decreed that if any section, portion, clause or part of this order is held invalid, the same shall not affect any other section, portion, clause or part hereof. Except as herein expressly provided, nothing herein shall modify, amend or repeal any order, rule or regulation of the Commission heretofore promulgated or adopted.

It is Further Ordered by the Railroad Commission of Texas that in any case where it is the desire of any railroad company, receiver or trustee to operate over its line of railway a sleeping car or cars without fully complying with the [fol. 67] provision of the orders above set out, the Commission shall be notified and its consent secured before such change or deviation from the terms of said orders is put in force.

It is not the intention of the Commission to place any burden on interstate commerce. If any part of this order or the application and the enforcement thereof when applied to any one or more railroads or any operation thereof be held to be an undue burden on interstate commerce, then such holding shall not affect this order as applied to other operations by railroads not amounting to an undue burden on interstate commerce.

The effective date of this order shall be December 1, 1939, and from and after said date all railroads of Texas shall be required to comply with the terms of this order, which is an amendment to passenger circular No. 164.

It is so Ordered, at Austin, Texas, on this the 4th day of November, A. D. 1939.

Railroad Commission of Texas, Lon A. Smith, Chairman; Jerry Sadler, Commissioner.

Attest: C. F. Petet, Secretary.

[fol. 68]

## EXHIBIT "G"

## Without Pullman Conductor in State of Texas

Pull- man line	Railroad	From	Time	To	Time	Miles
<b>SOUTHERN PACIFIC LINES</b>						
Texas & New Orleans RR Co.						
3128	Terminals: Ft. Worth & Houston	Ft. Worth Ennis	10.35p 6.05a	Ennis Ft. Worth	12.15a 7.45a	56 56
<b>SANTA FE</b>						
Atchinson, Topeka & Santa Fe Ry. Co.						
3015	Terminals: El Paso & Albuquerque	El Paso La Tuna	10.15p 6.52a	La Tuna El Paso	10.50p 7.30a	18 18
<b>MISSOURI PACIFIC LINES</b>						
Beaumont, Sour Lake & Western Ry. Co.						
3010	Terminals: New Orleans & Oakland	Sabine River Houston	4.20p 8.20a	Houston Sabine River	7.25p 11.20a	117 117
<b>SAN ANTONIO, UVALDE &amp; GULF RR Co.</b>						
3748	Terminals: Dallas & Corpus Christi	San Antonio Corpus Christi	8.30a 5.30p	Corpus Christi San Antonio	12.45p 9.45p	150 150
<b>ST. LOUIS, BROWNSVILLE &amp; MEXICO RY. CO.</b>						
3723	Terminals: St. Louis & Brownsville	Harlingen Brownsville	7.00a 9.00p	Brownsville Harlingen	7.55a 10.00p	25 25
<b>INTERNATIONAL—GREAT NORTHERN R. R. Co.</b>						
3309	Terminals: Galveston & St. Louis	Galveston Houston	10.30a 1.10p	Houston Galveston	11.59a 2.40p	50 50
<b>TEXAS &amp; PACIFIC</b>						
Texas & Pacific Ry. Co.						
3501	Terminals: St. Louis & El Paso	Texarkana	3.00p	Marshall	4.25p	67
3531	Terminals: Ft. Worth & Memphis	Marshall	2.20a	Texarkana	4.10a	67
<b>ROCK ISLAND LINES</b>						
Chicago, Rock Island & Pacific Ry. Co.						
3076	Terminals: Oklahoma City & Amarillo	Texola Amarillo	4.23a 10.00p	Amarillo Texola	7.40a 12.45a	112 112
<b>MISSOURI-KANSAS-TEXAS LINES</b>						
Missouri-Kansas-Texas RR Co. of Texas						
3265	Terminals: San Antonio & Kansas City	San Antonio Waco	1.30p 3.35p	Ft. Worth San Antonio	9.45p 9.00p	280 192
3251	Terminals: Ft. Worth-St. Louis-Waco	Ft. Worth Denison	3.50p 7.00a	Denison Waco	6.25p 11.40a	96 186
3258	Terminals: Houston & Wichita Falls	Ft. Worth Wichita Falls	8.30a 4.40p	Wichita Falls Ft. Worth	1.30p 10.00p	177 177

[fol. 69]

<b>MISSOURI-KANSAS-TEXAS LINES</b>						
Missouri-Kansas-Texas RR Co. of Texas						
3265	Terminals: San Antonio & Kansas City	San Antonio Waco	1.30p 3.35p	Ft. Worth San Antonio	9.45p 9.00p	280 192
3251	Terminals: Ft. Worth-St. Louis-Waco	Ft. Worth Denison	3.50p 7.00a	Denison Waco	6.25p 11.40a	96 186
3258	Terminals: Houston & Wichita Falls	Ft. Worth Wichita Falls	8.30a 4.40p	Wichita Falls Ft. Worth	1.30p 10.00p	177 177

## EXHIBIT "G"—Continued.

Pull- man line	Railroad	Without Pullman Conductor in State of Texas				
		From	Time	To	Time	Miles
3273	Terminals: San Antonio & Kansas City	Denison Colbert	11.30a 6.40p	Colbert Denison	11.42a 7.05p	7 7
	FRISCO LINES St. Louis, San Francisco & Texas Ry. Co.					
3424	Terminals: Galveston & Tulsa	Denison Platter	11.45a 6.47p	Platter Denison	12.05p 7.22p	11 11
	ST. LOUIS SOUTHWESTERN Ry. LINES St. Louis Southwestern Ry. Co. of Texas					
3370	Terminals: Memphis & Dallas	Texarkana Dallas	5.00a 6.00p	Dallas Texarkana	9.25a 11.05p	193 193
	KANSAS CITY SOUTHERN LINES Kansas City Southern Ry. Co.					
3175	Terminals: Shreveport & Kansas City	Bloomburg The Red River	7.48p 10.10a	The Red River Bloomburg	8.20p 10.40a	31 31
	SANTA FE Panhandle and Santa Fe Railway Co.					
3010	Terminals: New Orleans & Oakland	Sweetwater Texico	10.20a 1.53p	Texico Sweetwater	3.40p 7.00p	210 210
	BURLINGTON LINES Fort Worth and Denver City Ry. Co.					
3106	Terminals: Dallas-Denver	Amarillo Texline	7.55a 7.00p	Texline Amarillo	11.03a 9.45p	117 117

[fol. 70] [File endorsement omitted.]

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

## TEMPORARY RESTRAINING ORDER—Filed November 28, 1939

Hearing of the application of the plaintiffs in the above cause for temporary restraining order having been set for this date, came the plaintiffs by their attorneys, and pursuant to due notice came also the defendants by their attorney, the Attorney General of the State of Texas; and the parties announced ready for said hearing, and after hearing and considering the verified amended complaint, and the

argument of counsel; and it appearing that in the complaint the plaintiffs challenge the validity of certain orders of the Railroad Commission of Texas on Federal constitutional grounds and that substantial Federal questions are presented in the complaint and that this Court has jurisdiction of the parties and the subject-matter; and it having been made clearly to appear from specific facts shown by the verified complaint that, unless a temporary restraining order is granted, plaintiffs will suffer immediate and irreparable injury, loss and damage, in that the order of the Railroad Commission dated August 8, 1939 (Exhibit A in the complaint) and the order of the Railroad Commission dated November 4, 1939 (Exhibit F in complaint), impose heavy burdens upon the plaintiffs beginning December 1, 1939; and the plaintiffs are entitled by the laws of the State of Texas to have said orders reviewed in a court of competent jurisdiction in Travis County, Texas, and that there is no provision in the State law or in the challenged orders suspending their enforcement pending such review, and that, in the absence of a temporary restraining order or injunction, plaintiffs will be subjected to prosecution for heavy, daily recurring, penalties for failing and refusing to obey said orders on and after December 1, 1939;

Wherefore, it is ordered that upon the filing by the plaintiffs of a good and sufficient bond in the sum of \$10,000.00 to be approved by the clerk of this Court, payable to the defendants named in the complaint, and conditioned that plaintiffs will answer for all damages and costs which the defendants may sustain in consequence of the issuance of this temporary restraining order, or of any extensions thereof, the clerk of the United States District Court for the Western District of Texas issue a temporary restraining order enjoining and restraining the defendants Railroad Commission of Texas and the members thereof and the Attorney General of the State of Texas, their respective representatives, agents, servants and employees, from attempting to enforce against the plaintiffs, or any of them, the aforesaid orders of the Railroad Commission of Texas (Exhibits A and F attached to the complaint), and from instituting or prosecuting any suit or suits against the plaintiffs, or any of them, for penalties, or otherwise, for violation of said orders, or any part thereof. And it is further ordered that said temporary restraining order shall remain in force only until the hearing and determination of the application for

interlocutory injunction upon notice. And it is further ordered that a statutory three judge court be convened at —, Texas, on the — day of — 19—, at — m., for the purpose of hearing plaintiffs' application for interlocutory injunction; and that the defendants and the Governor [fol. 73] of Texas be given notice of said hearing as required by Section 380, Title 28, United States Code, and the clerk is directed to issue for service on said interested parties copies of this order.

Done at Waco, Texas, this the 28th day of November, A. D. 1939.

(S.) Charles A. Boynton, United States District Judge.

Ent'd: Civ. O. B. Vol. 1, page 53.

[File endorsement omitted.]

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[fols. 74-76] Bond on restraining order for \$10,000.00 approved and filed November 28, 1939, omitted in printing.

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[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING STATUTORY THREE-JUDGE COURT—Filed January 12, 1940

Plaintiffs having presented their Amended Complaint, duly verified, praying, among other things, for a preliminary or temporary injunction, enjoining certain orders of the Railroad Commission of Texas on Federal constitutional grounds; and it appearing to me upon considering said Amended Complaint that the matters therein presented are within the jurisdiction of a district court of three judges, as provided in Section 380, Title 28, U. S. Code (Section 266 of the Judicial Code, as amended), it is hereby ordered that the plaintiffs' application for said preliminary injunction as contained in their Amended Complaint shall be heard by a district court of three judges at Austin, Texas, in the court room in the United States Court Building, on February 12, 1940, at 9:30 A. M.; and for such purpose I hereby

call to my assistance the Honorable Edwin R. Holmes, United States Circuit Judge for the Fifth Circuit, and the Honorable James V. Allred, United States District Judge for the Southern District of Texas, to each of whom a copy of this order will be forwarded by the clerk of this court. The parties and the Governor of the State of Texas will be given notice of said hearing, and the clerk is directed to issue for service on the Governor of Texas a copy of this order, together with copy of said Amended Complaint; and to forward by mail a copy of this order to attorneys of record for the respective parties.

[fol. 78] Done at San Antonio, Texas, this 12th day of January, 1940.

(S.) Robert J. McMillan, United States District Judge.

Ent'd: Civ. O. B., Vol. 1, page 57.

[File endorsement omitted.]

[fol. 79] IN UNITED STATES DISTRICT COURT

WRIT TO SERVE COPY OF ORDER CONVENING STATUTORY THREE-JUDGE COURT AND AMENDED COMPLAINT—Filed January 17, 1940

The President of the United States of America to the Marshal of the Western District of Texas, Greeting:

You Are Hereby Commanded to Serve Honorable W. Lee O'Daniel, Governor of the State of Texas, with the accompanying

(1) Certified copy of Order Convening Statutory Three-Judge Court,

(2) Amended Complaint,

In Case No. 38 Civil Action and styled The Pullman Company, et al., vs. The Railroad Commission of Texas, et al., Herein fail not, and due return of this Writ make.

Witness, the Honorable Robert J. McMillan, Judge of the United States District Court for the Western District of Texas, and the seal of said Court, at Austin, Texas, this 13th day of January, A. D. 1940.

Maxey Hart, Clerk of said Court. By Joe Steiner,  
Deputy. (Seal.)

**MARSHAL'S RETURN**

Received this writ at Austin, Texas, on January 13, 1940, and on January 15, 1940, at Austin, Texas, I executed same by delivering to W. Lee O'Daniel, Governor of the State [fol. 80] of Texas, in person, a Certified copy of Order Convening Statutory Three-Judge Court and Amended Complaint, as I am herein commanded.

Guy McNamara, U. S. Marshal, by Oscar T. Martin,  
Deputy.

[File endorsement omitted.]

[fol. 81] IN UNITED STATES DISTRICT COURT

[Title omitted]

**DEFENDANTS' FIRST AMENDED MOTIONS TO DISMISS AND TO STRIKE CERTAIN PORTIONS OF COMPLAINT—Filed January 27, 1940**

To Said Honorable Court:

Now come the defendants, the Railroad Commission of Texas, and Lon A. Smith, Ernest O. Thompson, and Jerry Sadler, members of said Railroad Commission, and Gerald C. Mann, Attorney General of Texas, and in lieu of the motions heretofore filed on the 13th day of December, 1939, file and present these amended motions, as follows:

1

The defendants move to dismiss the action because the complaint fails to state a cause of action in favor of any plaintiff against any defendant upon which relief can be granted.

2

The defendants move to dismiss the action because the complaint shows that there is a misjoinder of plaintiffs and a misjoinder of causes of action, if any, because said complaint alleges that the enforcement of the orders in question, when applied to some of the plaintiffs, constitutes an interference with interstate commerce, and when applied to the other plaintiffs, does not constitute an interference

with interstate commerce, and said complaint shows that the facts relied on by each plaintiff are distinct and different from those relied on by the other plaintiffs.

[fol. 82]

3

The defendants move to dismiss the action as against all plaintiffs for the reason that there is a misjoinder of parties-plaintiff, in that the relationship between the plaintiffs is not such that any one or more of the plaintiffs may take advantage of any alleged injury suffered by the other plaintiff; and, furthermore, the allegations in the plaintiffs' Bill of Complaint are not sufficient to show each plaintiff has individually suffered damages in an amount to give this Honorable Court jurisdiction.

4

The defendants move to dismiss the action, or in lieu thereof, to require a severance, because there is a misjoinder of causes of action, in that the cause of action asserted by each plaintiff (except The Pullman Company) is different from that asserted by the other plaintiffs, the order complained of applied to a different situation as respects each plaintiff, under different conditions, and with different results.

5

The defendants move to dismiss the action as against plaintiff The Pullman Company for the reason that the petition shows upon its face that such plaintiff has no such interest as would entitle it to maintain the action.

6

The defendants move to dismiss the action as against all plaintiffs, except The Pullman Company and one other, for the reason that there is a misjoinder of causes of action, in that the cause of action sought to be maintained by each plaintiff (except The Pullman Company) is different from the cause of action sought to be maintained by any other plaintiff.

7

The defendants move to dismiss the action because the complaint shows that the Railroad Commission of Texas [fol. 83] had authority under the statutes of Texas to enter

the orders and do the acts in question, and the complaint fails to alleged that there was insufficient evidence or no evidence before said Commission to support or justify said orders, or that said Commission entered an order or orders contrary to the evidence before it, or that in view of the evidence before said Commission said orders were arbitrary or unreasonable.

8

The defendants move to dismiss the action because the complaint shows that the Railroad Commission of Texas had authority under the statutes of Texas to enter the orders and do the acts in question, and the complaint does not show that said order or the enforcement thereof constitutes unlawful interference with interstate commerce.

9

The defendants move to dismiss the action because the complaint shows that the Railroad Commission of Texas had authority under the statutes of Texas to enter the orders and do the acts in question, and the complaint does not show that said orders or the enforcement thereof constitute a taking of the plaintiffs' property "without due process of law."

10

The defendants move to dismiss the action because the complaint shows that the Railroad Commission of Texas had authority under the statutes of Texas to enter the orders and do the acts in question, and the complaint fails to allege that there was insufficient evidence or no evidence before said Commission to support or justify said order, or that said Commission entered an order or orders contrary to the evidence before it, or that in view of the evidence before said Commission said orders were arbitrary or unreasonable, and the complaint does not show that [fol. 84] said order or the enforcement thereof constitutes an unlawful interference with interstate commerce, and the complaint does not show that said orders or the enforcement thereof constitute a taking of the plaintiff's property "without due process of law."

11

The defendants move to strike that part of paragraph No. 3 in the complaint alleging that the matter in con-

troversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00) as to plaintiffs jointly, for the reason that such allegation is wholly immaterial.

12

The defendants move to strike that part of paragraph No. 7 in the complaint alleging that "the latter order (Exhibit "F") contains many erroneous findings that are contrary to the facts," for the reason that such allegation is wholly immaterial since (1) if the action is merely an equitable one, and a collateral attack upon an order of the Railroad Commission of Texas, to-wit, the order dated November 4, 1939, a copy of which, marked Exhibit "F", is attached to plaintiffs' petition, then the sufficiency of the evidence to sustain such order cannot be attacked, and in particular in this manner, and since (2) if the action be deemed a statutory appeal from the order of the Railroad Commission under Article 6453, Revised Civil Statutes of Texas, the findings of the Railroad Commission cannot be attacked by an independent inquiry into the facts so found, since if such findings can be attacked it would be upon the only basis that there was no evidence before the Commission, or that there was not sufficient evidence before the Commission to sustain such findings.

13

The defendants move to strike from the complaint those allegations in paragraph No. 27 thereof to the effect that the [fol. 85] quality of service of Pullman cars is not diminished when Pullman conductor operation is not provided thereon, and that on trains where there is no Pullman conductor operation the service rendered to passengers is of the same character and quality as that accorded where Pullman conductors are operated, and the allegations contained in paragraph No. 28 of said complaint alleging that the facts do not warrant the conclusion that the quality of service rendered to its traveling patrons on the lines in Texas described in Exhibit "G" is inferior to that rendered on the lines that are accompanied by Pullman conductors, for the reason that such allegations are wholly immaterial. In this connection it is shown that if the action is an equitable one and a collateral attack upon the order of the Railroad Commission of Texas appealed from, then

the facts found by the Railroad Commission as a basis for its order are not subject to attack, particularly by an inquiry into such facts, and if such action be an appeal from the order of the Railroad Commission under Article 6453, Revised Civil Statutes, then an inquiry into such facts is likewise immaterial since if such findings could be attacked at all it would only be upon alleging and showing that there was no evidence before the Railroad Commission, or that the evidence was insufficient to sustain the finding of the Railroad Commission.

The defendants move to strike that part of paragraph No. 29 of said complaint alleging that the net amount of added expense (which would allegedly result from compliance with said order) after allowing such offset item could be approximately Thirty-three Thousand Dollars (\$33,000.00) per annum, for the reason that such allegation is wholly immaterial, and indefinite, and that no facts are alleged from which it may be determined what loss, if any, would be suffered by any particular plaintiff.

The defendants move to strike that part of paragraph No. 30 in said complaint alleging that the property rights that will be destroyed by the enforcement of said order are of the value of a sum exceeding Three Thousand Dollars (\$3,000.00) to plaintiffs jointly, for the reason that such allegation is immaterial, and since each of the plaintiffs has an independent action, the value to all of the plaintiffs jointly could not be considered as determining the jurisdictional question.

The defendants move to strike paragraph No. 18 of the complaint for the reason that same states conclusions only, it pleads no fact, is inflammatory and prejudicial, and is neither material nor relevant to any issue.

(S.) Gerald C. Mann, Attorney General of Texas.  
 Cecil C. Rötsch, Assistant Attorney General.  
 Lee Shoptaw, Assistant Attorney General. Glenn  
 R. Lewis, Assistant Attorney General.

January 27, 1940.

The undersigned attorneys for the plaintiffs hereby acknowledge that on this date they received a copy of the above motions; and they have no objections to the filing of the same.

(S.) Ireland Graves, Attorney for The Pullman Company.

(S.) Claude Pollard, Attorney for all plaintiffs excepting The Pullman Company.

[fol. 87] [File endorsement omitted]

[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS' ORIGINAL ANSWER—Filed December 13, 1939

To Said Honorable Court:

Now come the defendants, the Railroad Commission of Texas and Lon A. Smith, Ernest O. Thompson, and Jerry Sadler, members of said Railroad Commission, and Gerald C. Mann, Attorney General of Texas, and present the following in defense to the cause of action sought to be maintained against them herein.

#### First Defense

The complaint fails to state a cause of action in favor of any plaintiff against any defendant upon which relief can be granted.

#### Second Defense

Defendants admit the allegations contained in Paragraphs Nos. 1, 4, 5, 6 and 7 of said petition, and admit all of paragraph 2 except the last sentence thereof, which last sentence is denied.

Defendants deny that the order, a copy of which, marked Exhibit "F", is attached to the complaint, contains erroneous findings that are contrary to the facts; otherwise, defendants admit the allegations contained in Paragraph No. 8 of the complaint.

[fol. 89] Defendants deny the allegations contained in Paragraph No. 9 of said complaint, but say that the findings mentioned in said Paragraph No. 9 formed a part of the grounds upon which the order dated November 4, 1939, was based, and in this connection these defendants say that the findings upon which the order was predicated appear from said order itself, a copy of which is attached to the complaint, marked Exhibit "F".

Defendants deny the allegations contained in Paragraph No. 10 of said complaint, and say that the facts are as shown in the Exhibits attached to the complaint.

Defendants deny the allegations contained in Paragraph No. 11 of said complaint to the effect that the Railroad Commission, under existing conditions, is powerless to issue or enforce a tariff allowing the differential mentioned in said paragraph, and are without knowledge or information sufficient to form a belief as to the truth of the allegation that such a tariff would be in conflict with interstate tariffs approved by the Interstate Commerce Commission; otherwise, defendants admit the allegations contained in said Paragraph No. 11.

These defendants deny the allegations contained in Paragraphs Nos. 3, 12, 13, 14, 16 and 36 of said petition.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 15 of the complaint to the effect that the contracts between The Pullman Company and the other plaintiffs have not been breached, and are not being breached, but are being fully performed to the entire satisfaction of the parties thereto, and to the effect that it is of no consequence to the passengers whether the railroads supply the sleeping car accommodations, or whether by means of contracts they cause such accommodations to be [fol. 90] furnished by The Pullman Company, and the other allegations contained in said Paragraph No. 15 these defendants deny.

If by the allegation in Paragraph No. 17 of the complaint that "the Commission has not found, and it is not a fact, that the Pullman porters on such runs are incompetent, or that Pullman porters on such runs are inherently, or, as a class, offensive, untrustworthy, or unsatisfactory" it was meant to allege that the Commission had not found that the Pullman porters are incompetent or inherently, or, as a class, offensive, untrustworthy, or unsatisfactory for porter

service, then defendants admit the truth thereof; but if it was intended to thereby allege that the Commission had not found, and that it is not a fact, that Pullman porters are incompetent, or inherently, or, as a class, offensive, or unsatisfactory as Pullman porters, then the defendants deny the same. These defendants admit that occasional drunkenness is not confined to Pullman porters, nor to the negro race; otherwise, these defendants deny the allegations contained in Paragraph No. 17.

Defendants deny that part of Paragraph No. 18 of said complaint alleging that "the Railroad Commission is issuing the challenged order has discriminated against certain employees of the Pullman Company, because they belong to the negro race". The allegation in said Paragraph No. 18 to the effect that the order will require the performance of certain services by members of the white race and thereby prevent the performance thereof by members of the negro race of certain compensation which they might earn in the absence of such order, is denied if such member or members of the negro race have acquired the rank, qualifications and training of Pullman conductor. The other allegations in Paragraph No. 18 are denied.

[fol. 91] These defendants deny those allegations in Paragraph No. 19 of the complaint to the effect that the order in question burdens interstate commerce, and is in conflict with applicable passenger tariffs in force with the approval of the Interstate Commerce Commission, and further deny the allegations contained in said Paragraph No. 19 to the effect that the plaintiff railroad companies are entitled to transport passengers in the Pullman cars without being required to conform to the burdens of the challenged order. Defendants say that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 19 to the effect that on the lines described in Exhibit "G" interstate passengers are transported in the Pullman cars, and that on some of them, notably those described as Pullman Line No. 3175, operating between Shreveport, Louisiana, and Kansas City, Missouri, the only passengers transported in the Pullman cars in the State of Texas are interstate passengers. Defendants admit that the challenged order contains the recitation attributed to it, and set out in quotations on page 21, in Paragraph No. 19 of said complaint. All other allegations contained in Paragraph No. 19 are denied by the defendants.

Defendants deny that part of paragraph No. 20 of the complaint alleging that "the challenged order, unless enjoined, will operate as an arbitrary and unreasonable interference with such right and will require the employment of additional Pullman employees whose employment is not warranted by the transportation demands", and defendants say that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said Paragraph No. 20.

Defendants admit that the challenged order purports to prohibit the operation in the State of Texas of a Pullman [fol. 92] or sleeping car or cars as a part of a railroad passenger train, unless such cars while occupied by passengers are continuously in charge of a Pullman conductor, but they deny that all Pullman cars as an integral part of the train are at all times in charge of the train conductor, that is, the effective or actual charge. Defendants admit those allegations complained — in Paragraph No. 21 to the effect that at the present time a number of the regularly scheduled railroad passenger trains in the State of Texas, on which Pullman sleeping cars are operated, have no Pullman conductor on board during all or a portion of the operation. Defendants admit the allegations contained in said Paragraph No. 21 concerning and explanatory of Exhibit "G" attached to said complaint. Defendants are without sufficient knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said Paragraph No. 21.

These defendants admit the allegations of fact contained in Paragraph No. 22 of the complaint pertaining to Pullman Line No. 3273, on page 28; Pullman Line No. 3015, on page 28; Pullman Line No. 3531, at page 28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said Paragraph No. 22 pertaining to Pullman Line No. 3723 to the effect that compliance with the challenged order would require either two Pullman conductors on the train at the same time north of Harlingen, or would require the stationing of a Pullman conductor at either Brownsville or Harlingen for the purpose of traveling on the train between those points. The other allegations in said Paragraph No. 22 relating to Pullman Line No. 3723 are admitted. Defendants say that they are without knowledge or information sufficient to form a belief as to the truth of the allegation

in Paragraph No. 22 of the complaint pertaining to Pullman [fol. 93] Line 3128 to the effect that the operation has been in effect continuously since 1925. Defendants deny that compliance with the challenged order would require the unnecessary employment of an additional Pullman conductor to accompany the train between Fort Worth and Ennis. Other allegations contained in Paragraph No. 22, pertaining to Pullman Line No. 3128 are admitted. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph No. 22 with reference to Pullman Line No. 3258 to the effect that on the Pullman car between Fort Worth and Wichita Falls the line averages 2.3 passengers Northbound, and 3.4 passengers Southbound daily. Defendants admit the other allegations contained in said Paragraph No. 22 with reference to Pullman Line No. 3258. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph No. 22 of the complaint pertaining to Pullman Line No. 3309 to the effect that in the Pullman car between San Antonio and Corpus Christi the train averages daily three (3) passengers Northbound and four (4) passengers Southbound; otherwise, the allegations contained in said paragraph with reference to Pullman Line No. 3309 are admitted. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation with reference to Pullman Line No. 3501 in said Paragraph No. 22 that the method of operation from Texarkana to Marshall has been in effect for more than twelve (12) years. Defendants admit the allegations contained in Paragraph No. 22 of said complaint pertaining to Pullman Line No. 3424; Pullman Line No. 3273; Pullman Line No. 3015; and Pullman Line No. 3531. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that Pullman Line No. 3175 has operated between Shreveport and Kansas City without a Pullman conductor for a period of [fol. 94] approximately seven (7) years. The other allegations contained in said Paragraph No. 22 with reference to Pullman Line No. 3175 are admitted.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Nos. 23 and 24 of said complaint.

Defendants deny those allegations contained in Paragraph No. 25 of the complaint to the effect that the need for

a Pullman conductor on a given train is determined by operating conditions affecting that train, including the volume of traffic, the length of the train with the consequent demands upon the time and services of the railroad and Pullman employees, and to the effect that the operations on which Pullman conductors are not now being used in Texas embrace runs of the kind described in said paragraph, and those in which traffic is light and where the revenue and other factors do not warrant the additional expense that would be incurred in providing Pullman conductors. In this connection defendants show that other factors than those mentioned in said paragraph enter into the need of a Pullman conductor, and that such other factors do warrant the additional expense if any that would be incurred in providing Pullman conductors. Defendants are without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said Paragraph No. 25.

Defendants admit that the duties set out in Paragraph No. 26 of the complaint of Pullman conductors are a part of the duties of such Pullman Conductors, but deny that those set forth are all of such duties, and defendants deny that one Pullman employee on the car is able to do all that is required to maintain the service, particularly if such employee is a negro porter. Defendants are without knowledge or information sufficient to form a belief as to [fol. 95] the truth of the allegations contained in said Paragraph No. 26 to the effect that the train conductor is in charge of the entire train, including the Pullman cars, and that all Pullman employees are subject to his orders, and that the rules governing the duties of Pullman employees require them to refer many matters of operation to the authority and discretion of the train conductor.

Defendants deny those allegations contained in Paragraph No. 27 of the complaint to the effect that the quality of Pullman car service is not diminished when Pullman conductor operation is not provided for the same, and deny that the character of service is the same whether the Pullman car is in charge of a Pullman conductor, or a Pullman porter, and deny that Pullman porters are qualified to perform the duties that would be performed by Pullman conductors if present. Defendants admit that the successful operation of The Pullman Company's business necessarily depends upon the company's maintaining a higher

quality of service to passengers. Defendants are without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said Paragraph No. 27.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph No. 28 of the complaint to the effect that the Pullman Company's method of conducting its operations in Texas is similar to that employed elsewhere under similar conditions; otherwise, the allegations contained in said Paragraph No. 28 are denied.

Defendants deny the allegations contained in Paragraph No. 29 of the complaint to the effect that the order would cause a net added expense of approximately \$33,000.00 per annum to the Pullman Company. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said Paragraph No. 29.

[fol. 96] Defendants deny that allegation in Paragraph No. 30 of the complaint to the effect that the enforcement of the order complained of would unconstitutionally deprive the Pullman Company of any rights; otherwise, defendants are without knowledge or information sufficient to form a belief as to the truth of the other allegations in said Paragraph No. 30.

Defendants deny the allegation contained in Paragraph No. 31 of the complaint to the effect that no complaints have arisen in Texas from the operation of cars without Pullman conductors, or from the conduct or services of Pullman porters on duty in such circumstances. Defendants are without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said Paragraph No. 31.

Defendants admit the allegations contained in Paragraph No. 32 of the complaint to the effect that the operation of Pullman cars as integral parts of railroad trains is necessary to the conduct of the business of railroad passenger transportation, and to the effect that the railroads require sleeping car and other Pullman car accommodations for their passengers in order to meet the demands of the traveling public. Defendants are without information or knowledge sufficient to form a belief as to the remaining allegations in said Paragraph No. 32.

Defendants deny the allegation in Paragraph No. 33 of the complaint to the effect that the Pullman Company is not a common carrier, and is not engaged in business in Texas as a common carrier, and to the effect that the railroad Commission of Texas has no jurisdiction over and no duties to perform in respect of the Pullman Company. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said Paragraph No. 33.

[fol. 97] Defendants deny the allegations in Paragraph No. 34 of the complaint to the effect that the Railroad Commission had no authority or power to promulgate or to enforce the order complained of, and deny that plaintiffs have no adequate remedy at law. Other allegations in said Paragraph No. 34 are admitted.

Defendants deny the strict correctness of the conclusions set forth at the outset of Paragraph No. 35 of the complaint, and down to 35-a, and say that the order of the Commission, copy of which is attached to the complaint as Exhibit "F", shows the correct basis for such action on the part of the Commission. All other allegations in said Paragraph No. 35 are denied, as well as all other allegations of fact contained in said complaint which have not been specifically touched upon above.

### Third Defense

These defendants say that the order of the Railroad Commission of Texas dated November 4, 1939, a copy of which is attached to the complaint as Exhibit "F" was entered after due notice of the hearing, that the facts therein found are true, that the Railroad Commission of Texas had before it ample and sufficient evidence sustaining the facts therein found, and that such order does not contravene the provisions of the Federal Constitution mentioned in the complaint, or any other Articles or Sections thereof, and that the Railroad Commission of Texas was acting within the authority of the Constitution and laws of the State of Texas.

Wherefore, these defendants pray that the relief sought by the plaintiffs in this cause be denied.

(s) Gerald C. Mann, Attorney General of Texas. Cecil C. Rotsch, Assistant Attorney General. Lee Shoptaw, Assistant Attorney General. Glenn R. Lewis, Assistant Attorney General, Austin, Texas.

[fol. 98] Copy received, December 13, 1939.

(s) Ireland Graves, Attorneys for The Pullman Company. Claude Pollard, Attorney For Other Plaintiffs.

[File endorsement omitted.]

[fol. 99] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING WARREN J. WEST, ALLEN HARVEY AND FIDELLA H. McBEY, PULLMAN PORTERS, LEAVE TO INTERVENE AS PLAINTIFFS—Filed Feb. 19, 1940

The motion of Warren J. West, Allen Harvey and Fidella H. McBay for leave to intervene in this cause as plaintiffs is hereby granted.

Done in open Court this 17th day of February, 1940.

(s) Saml H. Sibley, United States Circuit Judge for the Fifth Circuit. Robert J. McMillan, United States District Judge. James V. Allred, United States District Judge.

Entered: Civ. O. B., Vol. 1, page 79

[File endorsement omitted.]

[fol. 100] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT OF INTERVENER-PLAINTIFFS WARREN J. WEST, ET AL., PULLMAN PORTERS—Filed February 17, 1940

To the Honorable Judges of said Court:

Warren J. West, Allen Harvey and Fidella H. McBay, as intervener-plaintiffs, respectfully show to the Court:

1. The said Warren J. West is a resident of the City of San Antonio, in Bexar County, Texas; and Allen Harvey and Fidella H. McBay are residents of the City of Ft.

Worth, in Tarrant County, Texas. Each of them is a citizen of the United States of America and of the State of Texas.

2. Intervener-plaintiffs hereby adopt the averments in the Amended Complaint of the plaintiffs herein, with the same effect as if they were set forth at length in this complaint.

3. Additionally, intervener-plaintiffs aver that they are regularly employed by The Pullman Company as porters, and that each is regularly assigned to trains that for at least a part of the route in the State of Texas are not accompanied by a Pullman conductor, and where such intervener-plaintiff is the only employee of The Pullman Company on the train. Such operations are known as porter-in-charge runs, and for such service, in addition to the regular porter's salary, the porter-in-charge receives extra compensation from The Pullman Company of \$13.50 [fol. 101] per month, or approximately \$162.00 per annum. The enforcement of the Railroad Commission's order dated November 4, 1939, known as Passenger Circular 164 (Exhibit F in Plaintiff's Amended Complaint) would deprive each of the intervener-plaintiffs of said extra compensation.

4. Said Warren J. West is 62 years of age and has been regularly employed by The Pullman Company as a porter for a period of 20 years; the said Allen Harvey is 59 years of age and has been regularly employed by The Pullman Company as a porter for a period of 30 years; the said Fidella H. McBey is 49 years of age and has been regularly employed by The Pullman Company as a porter for 21 years. Each of the intervener-plaintiffs is in reasonably good health. Each of them will be entitled to retire from active service at the age of 65 years and thereafter will be entitled to receive monthly compensation or benefits pursuant to the Federal statute known as the Railroad Retirement Act. The benefits that each will receive will be reduced if the salary that he receives from The Pullman Company during the term of his active service is reduced. Consequently, the enforcement of the said Passenger Circular No. 164 will injuriously affect each of the intervener-plaintiffs during the period of his active service and also thereafter during the period of his retirement.

5. No notice of the hearing held by the Railroad Commission on August 31, 1939, was given to any of these inter-

vener-plaintiffs or to any person then representing any of them. Intervener-plaintiffs had no knowledge that the hearing would be held, and did not attend said hearing in person or by representative.

6. For a number of years each of the intervener-plaintiffs has been entrusted by The Pullman Company with the responsibility of serving as porter-in-charge on Pullman lines operating in and through the State of Texas. Passen-[fol. 102] gers on the Pullman cars are not subjected to the dangers or discriminations as found by the Railroad Commission in its Order (Passenger Circular 164 as amended), since the porters-in-charge have demonstrated in long years of service that they are men of good character, and are faithful, dependable, loyal and competent. Whether a man has these qualities is not determined by his race or color. The Pullman Company's patrons receive while on the cars in charge of intervener-plaintiffs and other porters exactly the same service that they receive when the porters are not in charge, and in no way is the standard of service lower in the former instance than it is in the latter.

7. As shown in said Amended Complaint, the said Railroad Commission's order, Amended Passenger Circular 164, will deny to each of the intervener-plaintiffs his rights as a porter-in-charge on the ground that he is a member of the colored or negro race, in violation of the equal protection clause and the due process clause of the 14th Amendment to the Constitution of the United States. For said reasons and for the reasons stated in Plaintiffs' Amended Complaint, said Railroad Commission order is invalid and unenforceable.

Wherefore, the intervener-plaintiffs hereby seek the relief prayed for in Plaintiffs' Amended Complaint.

(S.) Warren J. West, (S) Allen Harvey, (S) Fidella Hall McBay; Intervener-Plaintiffs. (S) Ireland Graves, Attorney for Intervener-Plaintiffs. Address: Norwood Building, Austin, Texas.

[File endorsement omitted.]

## [fol. 103] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION OF M. B. CUNNINGHAM, ET AL., PULLMAN CONDUCTORS, TO INTERVENE—Filed Feb. 17, 1940

To Said Honorable Court:

Comes now M. B. Cunningham of Fort Worth, Texas, W. M. Hadley of San Antonio, Texas, W. A. Worley of Dallas, Texas, and file this their Application to Intervene in the above styled and numbered cause and with respect would show:

1

Your applicants are each engaged in the profession as Pullman Conductors; each of them are now employed by the Pullman Company, one of the plaintiffs in the above cause, and have been so employed for many years prior to the filing of this application. Your applicants file this application for intervention in this cause on their own behalf and that of all other Pullman Conductors desiring to join in such application and on behalf of the Order of Sleeping Car Conductors, which is an association composed of about 1500 men engaged in the profession as Pullman Conductors, and in this association there are approximately 90 per cent of all the Pullman Conductors engaged in the profession, and for grounds of intervention would show:

2

The subject matter of this litigation is Circular Order No. 164 promulgated by the Railroad Commission of Texas [fol. 104] relating to the safety, care, comfort, convenience, proper accommodation, charges, fares and transportation of passengers on sleeping cars and pullman cars within the State of Texas and to prevent abuses, unjust discrimination and extortion in rates. Such order was marked Exhibit "F" and attached to and made a part of the original complaint as filed by the plaintiffs in this cause, wherein such order was set out in full.

3

Your intervenors are materially interested in the determination by this Honorable Court as to whether or not

said order of the Railroad Commission marked Exhibit "F" above referred to shall be enforced or not enforced, in that approximately ninety-five per cent of the Pullman Conductors who serve on the Pullman cars which are operated over the railroads of the State of Texas are members of the organization above referred to as the Order of Sleeping Car Conductors.

4

These intervenors would show that this application is accompanied by a pleading setting forth the claim for which this intervention is sought; that a copy of this application and such pleading have been delivered to all parties affected thereby.

Wherefore, your applicants respectfully pray that they be allowed to intervene in this cause.

Respectfully submitted: M. B. Cunningham, W. M. Hadley, W. A. Worley, Order of Sleeping Car Conductors, Intervenors. Culbertson & Morgan, Fort Worth, Texas, By Cecil A. Morgan, Attorneys for Intervenors. We interpose no objection: Black, Graves & Stayton, By Ireland Graves, Attorneys for Pullman Co. Claude Pollard, Attorneys for Railroads. Gerald C. Mann, Attorney General of Texas, By Glenn R. Lewis, Cecil C. Rotsch, Assistants, Attorneys for Defendants.

[fol. 105] [File endorsement omitted.]

[fol. 106] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLEADINGS OF INTERVENORS M. B. CUNNINGHAM, ET AL., PULLMAN CONDUCTORS—Filed Feb. 17, 1940.

To Said Honorable Court:

Come now M. B. Cunningham, W. A. Worley and W. M. Hadley, on their own behalf and on behalf of all other Pullman conductors desiring to join herein, and on behalf of the association known as the Order of Sleeping Car Conductors, and with leave of the Court first had and obtained

file this their pleadings herein, and with respect would show:

I

Your Intervenors adopt the pleadings of the defendants, the Railroad Commission of Texas, and Lon A. Smith, Ernest O. Thompson and Jerry Sadler, members of said Railroad Commission, and Gerald C. Mann, Attorney General of Texas, and by such adoption do plead each and all of the facts as pleaded by said defendants as fully and to all intents and purposes as if the same were fully set forth herein.

II

Your Intervenors say that the order promulgated by the Railroad Commission of Texas under date of November 4, 1939, a copy of which has been attached to plaintiff's complaint as Exhibit No. "F" was entered after due notice to all interested parties as to the time and place of such hearing, and that all parties at interest, including all the plaintiffs, appeared by their respective attorneys, and evidence [fol. 107] was offered by all parties, and after the evidence was received and weighed, and after arguments were heard and considered, the Railroad Commission of Texas was thus advised of all of the material facts relating to the subject matter as contained in said Exhibit "F", and did then promulgate such order and that such order does not contravene any provisions of the Federal Constitution, or any article or section thereof nor any amendment thereto, nor is such order in violation of the State Constitution nor any article or section thereof or amendment thereto, nor is the same in violation of any of the Statutes of the State of Texas, but in strict compliance with and is supported by the Constitution of the United States and of the State of Texas and the Statutes thereof.

Wherefore, your Intervenors pray that the relief sought by the plaintiffs in this cause be denied.

Culbertson & Morgan, Fort Worth, Texas, By Cecil A. Morgan, Attorneys for Intervenors.

[File endorsement omitted.]

[fol. 108] IN UNITED STATES DISTRICT COURT IN AND FOR  
THE WESTERN DISTRICT OF TEXAS

No. 38—Civil

THE PULLMAN COMPANY, ET AL.,

VS.

RAILROAD COMMISSION OF TEXAS, ET AL.

**Statement of Evidence—Filed July 22, 1940**

Be it remembered that on this 17th day of February, A. D. 1940, the above entitled and numbered cause came on for trial before the Honorable Samuel H. Sibley, United States Circuit Judge, Fifth Circuit, Honorable Robert J. McMillan, United States District Judge, Western District of Texas, and Honorable James V. Allred, United States District Judge, Southern District of Texas, at Austin, Texas, and continued from day to day to its conclusion; plaintiffs being represented by L. M. Greenlaw, Esq., and H. S. Anderson, Esq., of Chicago, Illinois, Claude Pollard, Esq., and Messrs. Black, Graves & Stayton of Austin, Texas; intervener plaintiffs (Pullman Porters) by Ireland Graves, Esq., of Austin, Texas; the defendants being represented by Cecil C. Rotsch, Esq., and Glenn R. Lewis, Esq., Assistant Attorney Generals of Austin, Texas; and the intervener (Order of Sleeping Car Conductors) being represented by Messrs. Culbertson & Morgan of Fort Worth, Texas; and during said trial the following testimony was introduced and proceedings had in connection therewith:

[fol. 109]

PLAINTIFFS' EVIDENCE

CHAMP CARRY, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is Champ Carry?

A. Yes, sir.

Q. You are vice president of the Pullman Company in charge of the operating department?

A. Yes, sir.

Q. How long have you been connected with the Pullman Company and its affiliated companies?

A. About 21 years.

Q. How long have you been vice president in charge of operation?

A. Since May 1st, 1936, I believe.

Q. You are a resident of Chicago, Cooke County, Illinois?

A. No, sir, I am a resident of Lake County, Mundeline, Illinois.

Q. How is that?

A. Lake County, Illinois, Mundeline, one of the suburbs of Chicago.

Q. Mundeline?

A. Yes, sir.

Q. Will you please tell us whether you are in charge of the department of the Pullman Company that has supervision over the employees that operate on the trains?

A. Yes, sir, that comes in the operating department.

[fol. 110] Q. That comes in the operating department?

A. Yes, sir.

Q. Now, please tell us something about the system that the company has, showing what the functions of the various employees operating in your department are—that is to say, how do you go about maintaining an efficient organization on the trains—do you have superintendents?

A. Yes, sir, we have; in the first place, we have several departments, in Chicago; the car service department and the car service personnel; the yard department, the shops, and then out in the districts we have six zones under the supervision of a superintendent—a zone superintendent. Those zones are geographic territories arbitrarily arrived at so as to work out the least amount of traveling, and in those zones we have the districts, and agencies in charge of district superintendents or agents, depending on the amount of business done or the size of the office force; and under them, of course, we have inspectors of all zones, instructors, and a general organization necessary to carry on the business.

Q. Do you have an assistant or one or more assistants in your office who have direct contact with the superintendents out in the various zones and in the districts?

A. I have two.

Q. Who are they?

A. Mr. Vroman and Mr. Gidney.

Q. B. H. Vroman? That is the gentleman who is one of the witnesses who have been sworn—

A. Yes, sir.

[fol. 111] Q. —as a proposed witness in this case?

A. Yes, sir.

Q. Now, he is in your office—

A. Yes, sir.

Q. —in Chicago?

A. Yes, sir.

Q. Now, then, what would be the next step under Mr. Vroman?

A. The next step under him would be the Zone Superintendents.

Q. Now, how many zone superintendents are there?

A. Six.

Q. Is there a zone superintendent in Texas?

A. Yes, sir, at Houston.

Q. Who is that, Mr. M. B. Osborne?

A. Yes, sir.

Q. How long has he been connected with the company?

A. I think it is over 25 years.

Q. Now, under the zone superintendents, what do you have.

A. District superintendents and agents.

Q. How many of them—how many district superintendents and agents do you have in Texas?

A. Well, you will have to let me think a minute—

Q. We can get that from Mr. Vroman later.

A. We have one at Dallas, one at Fort Worth, one at San Antonio, one at Houston—and Shreveport is outside of Texas. Mr. Vroman can give you that definitely.

Q. I will ask Mr. Vroman about that then.

A. All right.

Q. How long, Mr. Carry, has the company been operating certain trains or certain lines as you call them in charge [fol. 112] of porters?

A. Well, as near as I can tell, going back into the records, it was in effect over 60 years ago; it was an order that we found in the records going back to 1877. Now, I don't know whether it was true before that or not, but apparently it has been true all the way through.

Q. Does the company operate in that way in other parts of the State, or merely in Texas, at the present time?

A. You mean other parts of the Country?

Q. Other parts of the country; I beg your pardon?

A. Yes, sir, we operate that way every place that it is justified.

Q. Has the company adopted any policy of—or has it any plan of eliminating the conductor—

A. No, sir.

Q. —from its service?

A. No, sir, we use conductors wherever we figure a conductor is justified or wherever the service requirements justify it.

Q. And on the heavier trains—

A. Yes, sir.

Q. —carrying two or more pullman cars, as a rule conductors are employed?

A. As a rule, although I think there are some trains with two pullman cars where they are in charge of porters.

Q. Any of that kind of operating in Texas?

A. No, sir.

Q. All of the Texas operations in charge of porters are [fol. 113] one car operations?

A. Regularly, yes, sir; there may be an extra car at times when we have more business than can be handled in the regular line car when an extra car is put on in operation, putting a conductor; generally speaking we put a conductor on, depending on the conditions prevailing at that time.

Q. Yes, sir. Approximately how many porters has the company in its employ?

A. Between nine and ten thousand. I can't give you the exact number.

Q. Mr. Vroman would have the figures, I take it?

A. Yes, sir. It fluctuates; we have some on furlough and I couldn't say what that would be at any one moment.

Q. The Pullman Company has contracts with the Railroads covering the operations of the pullman cars in the State of Texas and elsewhere?

A. Yes, sir.

Q. Is there any car operated—any pullman car operated on any railroad in Texas other than pursuant to a contract?

A. Not that I know of.

Q. You know the Railroads that are parties to this suit—

A. Yes, sir.

Q. —and that are involved in these porters-in-charge operations in Texas?

A. Yes, sir.

Q. All of these operations are under contracts between the Railroad—the particular Railroad and the Pullman Company?

A. Yes, sir, all of them.

[fol. 114] Q. Is there an arrangement in general between the Railroad and the Pullman Company whereby the Pullman Company and the Railroad share a part of the revenues from the Pullman fares on these cars?

A. All of our contracts provide for the Railroads to share in the earnings if they reach a certain level. The general provisions of the contracts are that the Pullman Company first takes out the cost of the operation and then what we term as an initial return or profit for doing the business, and after that we divide any surplus that may be there. The contracts are generally—there are some little differences in the way that the division is made, but they are generally to the effect that there will be a division if the revenue is there.

Q. Do the contracts also contain provisions whereby if the companies don't earn a minimum amount the Railroads will contribute toward making up the difference, or will make it up?

A. Some of them do, yes, sir; some of them provide that if the earnings are not equal to the expenses they will make up the difference between the earnings and the expenses.

Q. Mr. Carry, I will ask you if you have sufficient familiarity with the effect of the porter in charge operations, as contrasted with the operation of the Pullman cars in charge of Pullman conductors to be able to say whether in general the porter in charge operations are equal to or inferior to the other operations?

[fol. 115] Mr. Morgan: If Your Honors please, we object to a general leading question like that. Certainly it isn't confined to Texas, if he is going to ask it at all.

Judge Sibley: I expect we had better stick to Texas.

Judge Graves: All right.

Q. I will ask you to confine that to the State of Texas. I don't care for you to go into details; I just asked you the general question.

A. Would you mind repeating that question? I got a little side-tracked here.

Q. The question is whether you have had occasion as the operating official of the company to determine whether the operations known as porter in charge operations in Texas have been equal to or inferior to the operations known as the conductor operations?

A. I certainly have; we study that all the time, and we are quite sensitive to the fact that if we do not have business we do not exist; so we follow this up, and if we didn't think they were equal to it, we would change it.

Q. The contracts that you refer to are for a term of years—each one of them is for a term of years?

A. Yes, sir.

Q. Some of them expiring periodically?

A. They do; they are not made at any one time.

Q. Some of them expiring at the end of 1940?

A. Yes, sir.

Q. Some of the contracts have just been made—

A. Just been made for five years.

Q. —for a period of five years?

A. Yes, sir.

Q. Were those contracts that are now in existence made [fol. 116] at the time when the porter in charge operations were in existence?

A. Yes, sir; I don't think there is a single contract we have that was not made after porter in charge operations were in existence in the territory that the particular Railroads operate in.

Q. Do you know, Mr. Carry, in what way the Pullman Company undertakes to supervise its service? I will direct your attention to the recital in this order that the only supervision that the company has over the Pullman porter is the supervision of the Pullman conductors and that when they are not on the trains there is no supervision or inspection.

A. Well, that, of course, is not so. We have, as I said before, we have the district offices, and the porters and conductors are all assigned to a district; they have seniority in the district, and they come under the direct supervision of the district supervisor or agent and his assistants; and in addition to that they have these district superintendents through the zone superintendent; they have inspectors, the passenger traffic department has inspectors, the yard department has inspectors, that all ride the trains and they are

all supervising the service; they supervise the porter service just as they supervise the conductor service.

Q. In addition to the district superintendent and zone superintendents do you have any inspectors whose duty it is to ride the trains and whose entire time is spent doing that?

A. Yes, sir.

Q. How many of them are there in Texas?

[fol. 117] A. Well, there are two that work under the zone superintendent and one that works under the safety department, one that is under the yard department, and I believe there is one under the passenger traffic department.

Q. Now, it will develop, Mr. Carry, that two of these intervener plaintiffs operate out of Fort Worth and one of them operated out of San Antonio. Do you have a district superintendent at each of those places?

A. Yes, sir.

Q. Do you have any way of supervising the operation of the train at the initial point—for example, where these two men start on their run at Fort Worth, do you have any way of knowing whether they—when they report for duty to take the train or to go out with the train, whether they are in proper condition in every way?

A. Well, it is the definite duty of the district superintendent or his assistant to inspect every train before it leaves, to see whether the men are in proper condition and properly uniformed to go out and also that the car is in proper condition to go out. You know there is a lot to this service besides just the service on the train.

Q. Suppose that the porter were to be late, or for some reason he should not be faithful to his duty, and should not be—or he should be sick, or for any other reason he is not fit to go out with the train, would there be somebody representing the Pullman Company at the station to place a substitute on the run?

A. Yes, sir.

Q. Would it or not be his duty to do that?

[fol. 118] A. It would definitely be.

Q. Is that true at San Antonio and Fort Worth and Houston—

A. Yes, sir.

Q. —and Dallas?

A. Yes, sir.

Q. You have, in other words, not only the district superintendent but you have night men whose duty it is to be at the station before the train goes out?

A. Yes, sir, we have men that inspect all trains before they leave.

Q. Now, you said something about the service rendered by the company to the passengers, in addition to the service rendered by the conductors and the porters. I would like for you to explain that—what you mean by that.

A. Well, what I mean by that is that we feel it is a complete service, it has to start with a proper piece of equipment, but after you get that, the maintenance of that equipment is as important a part of our service as the service furnished on the cars,—the yard work, the cleaning, the painting, the general up-keep, taking care of the trucks, running a department for safety, periodical shopping of the cars, and all of those things are just as important as the men on the train, in our opinion, because they go to make up a complete service and if any one of them falls down there is possible justification for complaint.

Q. Now, you have told us something about the method employed by the Pullman Company in supervising the service. What precaution does the Pullman Company take to see to it that men of proper—of good character are employed?

[fol. 119] A. Well, when we receive an application from any one we investigate as fully as we know how; in the case of porters in the larger districts, we have colored men of whom we know who go around and talk to the people who live in the neighborhood, and inspect their families and know all they can about them. If they are out in the country we would probably send a white man to do it; we could possibly even get more information that way; and after we get them there is a constant supervision from the time they enter the service, and if we find them falling down after taking all these precautions, why, we have to take the necessary action to maintain our standard.

Q. Do you happen to know whether the porters operating in the State of Texas are Texas men?

A. To the best of my knowledge they are.

Q. They are?

A. About that—I say I am not positive about that.

Q. Who selects the men—do you select them in Chicago?

A. Oh, no, the men are selected by the local men who know them; the district superintendents select them.

Q. How do you go about determining whether an operation shall be porter in charge operation or a conductor operation?

A. Well, in most cases the district superintendent writes in and suggests that if it has been a conductor operation that the conditions warrant a change and that it be made into a porter in charge operation. We then send inspectors to go and ride the line and they very frequently talk to passengers who use the line frequently, and make a general [fol. 120] study of it. The district superintendent of course, would have it reported to the zone superintendent before it came into the Chicago office, and unless we had the full approval of the zone superintendent after his investigation, why, we would not do it; but we never order it from Chicago without the full approval of the local men who are thoroughly familiar with the conditions prevailing on that particular line.

Q. Do you maintain the conductor operations on all lines where it is your conclusion that conductors are needed for the service?

A. Yes, sir.

Q. Do you happen to know what the extra pay is that the porter gets for his porter in charge service?

A. Thirteen dollars and fifty cents a month.

Q. Now, does he get that regardless of whether he is porter in charge for a portion of the run or for all of the run?

A. If he is porter in charge for a portion of the run he gets paid for the full round trip. That is a provision of our agreement with the porters.

Q. Well, in other words, this porter that operates on this Brownsville road to which we have referred and who is on the car, I take it, from St. Louis to Brownsville and is in charge for a distance of 25 miles, does he get the porter in charge compensation?

A. Yes, sir.

Q. Thirteen dollars and fifty cents a month?

A. Yes, sir.

Q. Do you know whether those jobs are given to the [fol. 121] older men—the men who have been in the employ

of the company for a long period of time and who have been tried and who have experience and have demonstrated that they are competent?

A. That is always considered, because our agreement with the porters provides that seniority will prevail in the event fitness and ability is sufficient. Of course, the seniority prevailing means that the older men have the first chance at it, and it is only in the event these older men are not fit and able that we do not place them on the run; but we never go very far down the line.

Q. Well, under the agreement who has the authority to determine whether they are fit and able?

A. The company.

Q. The company?

A. Yes, sir.

Q. Do you exercise that privilege?

A. We certainly do.

Judge Graves: That is all for the present.

Judge Sibley: Cross-examine.

#### Cross-examination.

##### Questions by Mr. Lewis:

Q. Mr. Carry, briefly, what are the duties of a Pullman conductor?

A. His duties are to collect fares, and make assignments of space and generally to supervise the service on the train.

Q. And briefly what are the duties of a Pullman porter?

A. They help the passengers on the train, make up the [fol. 122] berths, and take care of their needs as far as they can and keep the car in good condition.

Q. The porters then performs mostly janitor service and personal service to the passengers?

A. I don't consider them janitor services. That is done in the yards. He performs personal services for the passengers.

Q. In those lines where Pullman conductors are used, I presume that you consider they are needed?

A. In most cases, yes, sir.

Q. And are the Pullman porters on the lines where they are in charge, are they particularly a better class of people than the other porters whom you have employed in Texas?

A. I wouldn't say they are a better class but they certainly are the top rank.

Q. But you have large numbers of other porters who would be just as good?

A. I think we have quite a number that would be qualified.

Q. Well, now, how much more does the Pullman conductor get for performing his services than a Pullman porter does when the porter is performing not only the porters services but also the Pullman conductor services?

A. I don't know that I understand you. You mean the difference between the total porter wages and the conductors wages, or the thirteen dollars and a half?

Q. The full porters wages when he is acting as conductor, and the Pullman conductors wages, what is the difference between the two?

[fol. 123] A. Between 85 and a hundred dollars.

Q. The Pullman porters draw 85 and a hundred dollars a month?

A. Yes, sir.

Q. Now, your whole decision will depend upon the local conditions when you decide to remove the conductor and operate through a porter in charge?

A. Yes, sir.

Q. Wholly through local conditions and the local situation?

A. Yes, sir.

Q. Then, when you consider the question of removing a conductor and putting on a porter you wouldn't consider anything except that particular line that is in question?

A. That particular line and its effect, its general effect. There are many things that apply to all lines.

Q. There would be things which would make it desirable to have a Pullman conductor in charge of those lines where conductors are not used—

A. I don't know of any.

Q. —isn't that true, Mr. Carry?

A. I don't know of any.

Q. You see no desirability whatsoever of having a Pullman conductor on those cars where a Pullman porter is in charge?

A. No, sir, I don't think there is any need.

Q. Yet there is a need for the Pullman conductor of the ones where a Pullman conductor remains?

A. In most cases.

Q. For purposes of supervision?

A. Not necessarily.

Q. Well, do you mean to say that you don't need any [fol. 124] supervision?

A. I don't think we do in those cases. In those small car lines of one or two cars where we have porters in charge I think we get plenty of supervision other than the conductor supervision.

Q. Where from?

A. The districts, the inspectors.

Q. Is that the only place where you get supervision?

A. From the whole organization, yes, sir.

Q. You really get none from the train conductors do you?

A. I don't know what you mean by supervision. They are in charge of the train.

Q. It is a theoretical proposition, though, isn't it, that they are in charge?

A. I wouldn't think so; the passengers pay the same rate and he is entitled to the same consideration from the train crew as he is in a Pullman car as in a coach. I don't see where it is theoretical.

Q. Well, he doesn't receive any more service out of the train conductor when the Pullman porter is in charge than he does when the Pullman conductor is in charge, does he?

A. He might; it depends on his need.

Q. Well, does he?

A. You will have to name a specific case. I can't answer a general question of that kind.

Q. Do you depend to any extent upon the assistance from the train conductor when the Pullman conductor is not in charge?

A. Yes, sir, and also when he is in charge.

Q. Well, do you depend on him any more when there isn't a Pullman conductor in charge than you do when there is, or not?

[fol. 125] A. No, I would say it is about a stand-off.

Q. So that the part that the train conductor plays and the train brakeman and the flagman, that has nothing to do with the need or not need of a Pullman conductor, does it?

A. If you are speaking of need, no.

Q. I mean in your own determination of the question.

A. If you say need, no; but the fact that he is there is

something; their riding in the car is a consideration that you cannot ignore; but it is such a rare case where you have any need to call on them it is hard to say that there is a need for him, but he is there and you can't ignore him from a practical standpoint.

Q. It is true, is it not, that all of the Pullman porters are negro men?

A. Yes, sir.

Q. And all of the Pullman conductors are white men?

A. Yes, sir.

Q. Your reason is wholly an economic one, when you take off a Pullman conductor, isn't that correct?

A. Well, I don't know, it probably is that we don't think it needs it; that is the reason we take it off; we just think it is — economical thing or a waste to have two men there when there is only need for one.

Q. The conductors work on a monthly salary, do they not?

A. Yes, sir.

Q. I mean the Pullman conductors.

[fol. 126] A. A man who has a regular assignment works on a monthly salary; he works on a —

Q. And you are entitled to call on them for 240 hours of service per month for their regular pay?

A. Yes, sir.

Q. And if they work longer than that they draw more pay?

A. Yes, sir.

Q. Now, it is true, is it not, that there are a large number of Pullman conductors in Texas who work by the month whom you don't call on?

A. Yes, sir, under our regular contract and agreement with the conductors, even though, it is short of the regular assignment they get the full months pay.

Q. Now, if it were possible to use the extra—the unused of those conductors to operate those lines, you would be glad to do it?

A. We couldn't do it.

Q. You couldn't do it?

A. No, sir.

Q. If it were possible to do it, would you?

A. I don't know; of course, that is a question that I don't know what you mean because if you mean we work them more and not pay them any more, why that is one

thing; but we don't feel we need the service so there wouldn't be any point in doing it.

Q. Who supervises the work of the employees and the cleanliness of the cars while the cars are en route, when a [fol. 127] Pullman conductor is not there?

A. If there is no inspector there, nobody does.

Q. Nobody does; it is left entirely with the porter?

A. But the point is that there are district people available at intervals along the line to see that it is up to standard.

Mr. Lewis: That is all.

(Four witnesses excused.)

Judge McMillan: How do you spell your name?

Mr. Carry: C-a-r-r-y.

Judge McMillan: Thank you.

Judge Sibley: Call your next witness.

Mr. Graves: Mr. B. H. Vroman.

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B. H. VROMAN, a witness for plaintiff, having been duly sworn testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Where do you live, Mr. Vroman?

A. Chicago, Illinois.

Q. What is your position with the Pullman Company?

A. Assistant to the vice president in charge of operation.

Q. How long have you been connected with the Pullman company and in what position?

A. Well, it is not quite 35 years; I have had various positions.

Q. Have you served as a district superintendent?

A. Yes, sir, from the year 1920 to 1938 at Denver, Colorado and then I came on to Chicago as zone superintendent, [fol. 128] and then in charge of the personnel department for a few years, and for the past four years as assistant to Mr. Carry.

Q. Have you ever served as a superintendent in Texas?

A. No, I served as an agent down at Galveston many years ago.

Q. Do you personally know these porters that operate on these lines?

A. A good many of them, in all of them.

Q. Have you made—well, first I will ask you this, has there been in the past five years, we will say, an increase in the operation of porter in charge operations?

A. I think there has been a slight increase; we don't keep a running record from day to day as to just how many porter in charge operations we have, but there has been a slight increase in recent years.

Q. Has there been any greater increase in proportion to the percentage of increase of porter in charge operations than there has been a decrease or a falling off in business?

A. No, sir, much less.

Q. Much less?

A. Yes, sir.

Q. How does business compare, we will say, in the end of 1934 with what it was in the end of 1929?

A. Well, I think there has been more than 50 per cent decrease in the passengers handled, and I think the falling off in car operations and the same will apply to conductor requirements, about 42 or 43 per cent.

[fol. 129] Q. In other words, there has been a 50 per cent decrease in passengers hauled and a 50 per cent decrease in number of cars in operation, but a less decrease than that in the number of conductors employed?

A. The decrease of cars operated and conductor requirements have been just about the same.

Q. About the same?

A. And more than 50 per cent in passengers handled.

Q. Do those propositions hold good in the State of Texas as well as throughout the country?

A. Yes, sir.

Q. Do you know how long the porter in charge operations have been in effect by the company?

A. Well, as Mr. Carry testified, they have been in effect for 60 years or more.

Q. How long have they been in effect in the State of Texas?

A. Well, I have a record of some of them for 21 or 2 years; a number of them for 15 years or 20 years.

Q. Are these porters that operate on these lines that are involved in this suit, are they Texas men?

A. Every one.

Q. State whether or not it is your business to supervise the service and to maintain such supervision as may be necessary to maintain the standard of the service?

A. Well, the direct supervision of the service throughout the country comes under the zone superintendents.

Q. Well, whom do they operate under?

A. They operate under Mr. Carry's supervision.  
[fol. 130] Q. And you are his assistant?

A. Yes, sir.

Q. Have you made an investigation of the records of the company with a view of determining these—a comparison between the service rendered by the porter in charge and the service rendered on cars where conductors are in charge?

A. We have, very definitely.

Q. Have you made that investigation over a period of more than a year?

A. Yes, sir.

Q. How far back did you go in your study?

A. It is a continuous proposition; we are covering the service all the time; we have inspectors in every zone that do nothing but ride the lines and make reports. So it is a constant supervision.

Q. I will ask you to state whether from the standpoint of the company, the service rendered by porters in charge in the State of Texas is equal to or inferior to the service rendered on these cars—or other cars in charge of Pullman conductors?

Mr. Lewis: If the Court please, may we make an objection at this point, that is, that the complaint in this case does not allege that the Commission's findings to the effect that this service of Pullman conductors is needed was not based upon substantial evidence. There is no attack whatsoever made upon the findings of the Commission in that regard, and we think the Commission's order would have to be taken for its face value in that respect, and we object to the introduction of further evidence of this nature.

[fol. 131] Judge Sibley: Do you regard it as a sort of res adjudicata proposition or just presumption?

Mr. Lewis: We regard it as a presumption.

Judge Sibley: Well, I think it is that, but wouldn't they have a right, if they could, to show that in point of fact there is no basis for any such conclusion.

Mr. Lewis: Your Honor, they have not made any allegation of facts, only as a conclusion; they merely allege there

isn't a need for Pullman conductor service. They have made no allegation as a basis—

Judge Sibley: Well, the general finding was that there was a need, that the passengers paid their money and usually got so and so and ought to have it on one run the same as the other.

Mr. Lewis: Yes, sir, Your Honor, and I will point out to that all of these Railroads and the Pullman Company were present at the proceedings before the Commission.

Judge Sibley: I don't think there is any res adjudicata about it.

Mr. Lewis: I am not sure about that, Your Honor. On this point I am afraid I might be wrong about this question. The Court a while ago stated that you could not have an appeal from an order of the Railroad Commission to the Federal Court. I might be wrong about it but I think you can, and I think—

Judge Sibley: Well, it depends on the nature of your appeal and the Texas law. I don't know what it is. If it is [fol. 132] really a judicial suit, why you might bring it perhaps in a Federal Court but if it is a strict appeal, I don't think you could.

Mr. Lewis: The statute provides for the filing of a suit in a Court of competent jurisdiction.

Judge Sibley: Yes, the Federal Court immediately takes jurisdiction under such circumstances.

Mr. Lewis: And under those circumstances we think it is incumbent on the parties to allege that the Railroad Commission was without a basis for its findings.

Judge Allred: To allege it and show it?

Mr. Lewis: That is right. We—

Judge Sibley: I don't know but what they are proving about what you say they do allege.

Mr. Lewis: They allege that, Your Honor, but I think they would have to allege that the Commission did not have substantial evidence on which to base their findings. Now, they have not alleged that so far as—

Judge McMillan: They allege that the action of the Commission is unreasonable and confiscatory.

Mr. Lewis: They merely allege in general terms, Your Honor, that Pullman conductors are not needed; that it would cause a useless expense.

Judge McMillan: I know but don't they draw the general conclusion that the order of the Commission is unreasonable?

Mr. Lewis: Yes.

Judge McMillan: They wouldn't have to plead their evidence. Couldn't they support that with evidence?

[fol. 133] Mr. Lewis: They were passed after the proceedings before the Commission.

Judge McMillan: Well, that same question comes up before every Three Judge Court; that is a contention on the part of the Attorney General that we are bound by the findings of the Commission and we can't consider any evidence except the evidence before the Railroad Commission. Well, that has been ruled on adversely and never has been up-set yet. It may be that we are wrong about it.

Mr. Lewis: Well, that seems to me to be still doubtful and we want to preserve our objection in that case.

Judge Sibley: Well, we will hear the evidence.

Mr. Graves: Was the question answered?

The Reporter: No, sir, no answer has been made. I will read the question to the witness.

(Thereupon the Reporter read the question as follows: "I will ask you to state whether from the standpoint of the company, the service rendered by porters in charge in the State of Texas is equal to or inferior to the service rendered on these cars—or other cars in charge of Pullman conductors?" )

A. My answer is it is.

Q. The service rendered—

A. On the cars in Texas is equal to what it is in other parts of the country.

Mr. Lewis: Your Honor, is it in line to ask that this objection and exception be taken to similar testimony throughout?

Judge Sibley: That will be all right, sir.

[fol. 134] Mr. Graves: I understand that what counsel means by that, may it please the Court, is that he objects to our going into this evidence for the reason that we do not challenge this order on the ground that it was not based on substantial evidence heard by the Railroad Commission. If that is the point—

Judge Allred: In other words, that your pleadings are not sufficient to justify this evidence?

Mr. Graves: Yes, sir.

Judge Allred: I think that is his position.

Mr. Graves: Yes, sir, that the order should be tested by what was heard by the Commission and not by what is heard by the Court here.

Mr. Culbertson: Your Honor, may we amplify that briefly. This is not a trial de novo on the constitutional grounds. If it were a trial de novo and a diversity of citizenship, then there would be no question but what we could try this case de novo as to all the issues; but it is being attacked on constitutional grounds, and they simply bring up a question disputing what the Railroad Commission found against them. The Supreme Court of the United States says that is simply a disputable issue of fact found by the Railroad Commission and this Court should not overturn it. And we want the objection to go to all of the evidence which would have to do other than with the constitutional questions involved here.

Judge Sibley: Well, the constitutional question is pretty broad; whether it is purely arbitrary and without any basis that is one constitutional question.

[fol. 135] Mr. Culbertson: We think so but we don't think it is more than—

Judge Sibley: Well, he says the service is smooth and good enough, but whether he can keep the operations and all those things are other questions. The Railroad Commission didn't think a negro porter could keep the peace in a car. I don't know whether there is any trouble like that in Texas.

Mr. Culbertson: That is a disputable question.

Judge Sibley: Well, the trouble is the Commission couldn't try the constitutional question; that is not its business; that is the business of the Court and we are obliged to try it when we start into it. Go ahead and ask the questions.

Q. Mr. Vroman, you have answered as to a comparison between service rendered on the porter in charge lines in Texas with the services rendered on other lines outside of Texas. What I want to direct your attention to is comparison between the porter in charge service and the service rendered on those lines—with the services rendered on lines that are accompanied by a Pullman conductor. Tell us whether or not there is any difference, and if so, which is the superior.

A. Our reports indicate that the service is just as good on the porter in charge lines as it is on lines where we have the supervision of conductors.

Q. Mr. Vtoman, have you made a study of this order with the view of determining how many conductors would have to be employed by the company to comply with this order, if compliance was had by putting on the conductors, [fol. 136] rather than taking off the cars?

A. I have.

Q. How many would it require?

A. It would take seventeen and one-third conductors.

Q. In addition to what you have employed now?

A. Yes, sir.

Q. Let's see. What—we have referred to this Brownsville line, line No. 3723. What would you have to do to comply with the order in respect of that line?

A. It would be necessary to place a conductor either at Harlingen or Brownsville, and operate them locally between those points, a distance of 25 miles, night and morning. That would involve the expense of one and one-sixth conductors. It is really a one conductor operation, but under our agreement, we are obliged to give them relief at least four times a month.

Mr. Lewis: If the Court please, we move to strike the witness's testimony relative to the agreement, and the testimony based on that, because we don't think that we would be bound by the contracts that they may have with those parties.

Judge Sibley: The Commission says you are entitled to the benefit of it. Don't you have to take the burden?

Mr. Graves: If you will pardon me just a moment, I think you misunderstood him.

Q. You were talking about agreements with conductors?

A. Yes, sir, with the conductors.

Mr. Lewis: He is talking about agreements between the [fol. 137] Pullman Company and the conductors with reference to—

Judge Sibley: Don't we all know they are organized, and you can't travel except according to those agreements? The policy of the Federal Government right now is to make everybody make agreements of the sort.

Mr. Lewis: That may all be true, Your Honor, but we don't think that would prohibit their employing men in

the capacity of conductors to operate those lines, perhaps, outside of those agreements.

Judge Sibley: I think as a practical matter, they would be entitled to prove the situation and the facts.

By Judge Graves:

Q. I will ask you to state whether it is—

Judge Sibley: Is that one that is now just dropped off with a porter, dropped off from another train?

A. Yes, sir. There is a pretty good picture of it, Your Honor, on that map there. The conductor operates to Mission, and drops the car off at Harlingen.

By Judge Graves:

Q. Are the agreements with the—

Judge Sibley: The conductor in charge of the car, in charge of one of the operated cars, goes as far as your junction there?

A. Yes, sir.

Judge Sibley: And that other car was left off with a porter to go 25 miles?

A. Yes, sir.

By Judge Graves:

Q. The other car goes to Mission. How far is that?

A. About 35 or 40 miles. I am not sure about that, 35 or [fol. 138] 40 miles from the junction point.

Q. The agreements with the conductors—have the agreements with the conductors been made pursuant to the National Railway Labor Act?

A. Yes, sir.

Q. It would be pretty hard for you to get out from under that, wouldn't it?

A. I believe it would.

Q. What would be required in respect to the first line that is mentioned in Exhibit G, line No. 3128?

A. That is much similar to the Brownsville line. The Fort Worth and Houston operation, designated as line 3128, operates with a porter in charge to Ennis, where it is picked up with a conductor who operates between Dallas and Houston, and that is similar to the other line. We would

be required to operate a conductor locally between Fort Worth and Ennis.

Q. These maps that we have handed to Your Honors have been arranged in the order in which the lines are shown on Exhibit G, and the one I am now inquiring about—

Judge Allred: That doesn't show what road that is.

A. That is the Southern Pacific.

Judge Sibley: How far is that from Fort Worth to Ennis?

A. I think it is 56 miles, if I am not mistaken.

Judge Sibley: Is that a dropped off car?

A. It is dropped off north-bound, and picked up, of course, by the Dallas conductor south-bound.

[fol. 139] Judge Sibley: The round trip runs on beyond Ennis?

A. Yes, sir.

Judge Allred: On up to Dallas north of Ennis?

A. Yes, sir.

By Judge Graves:

Q. As I understand, there is a through line from Dallas to Houston on the S. P., and on that train leaving at night, the overnight run from Fort Worth to Houston on the S. P., and S. P. runs a branch from Fort Worth that connects with that train at Ennis, 56 miles down the line?

A. That is absolutely correct.

Q. And you run the Pullman car for that 56 miles from Fort Worth to Ennis in charge of a conductor?

A. In charge of a porter.

Q. I beg your pardon. And there the car is hooked onto the main line on which there is a Pullman conductor?

A. That is correct.

Q. And running in the opposite direction, the same process operates?

A. That is correct.

Q. The schedule of that train at the present time is shown in Exhibit G, is it not?

A. That is correct.

Q. Leaves Fort Worth at 10:35 P. M. and arrives at Ennis at 12:15 A. M.?

A. That is right.

Q. Do you happen to know whether one of these intervenors operates on that line regularly?

A. Yes, sir.

[fol. 140] Q. That man Allen Harvey?

A. Yes, sir.

Q. How long has he been with the company?

A. I think about 21 years, if I am not mistaken. It might be longer than that.

Q. Stand up, Allen. Is that him?

A. That is he.

Q. All right. Mr. Vroman, you would have to have an additional conductor, you say, to operate on that train between Fort Worth and Ennis?

A. That is right.

Q. And between Ennis and Fort Worth?

A. That is right.

Q. Now, this next line is a Santa Fe line, Atchison, Topeka and Santa Fe, operates from El Paso to Albuquerque?

A. That is right.

Q. Line 3015, and according to this exhibit, it reaches El Paso at 10:15 P. M. and arrives at LaTuna at 10:50 P. M.?

A. Yes, sir.

Judge Sibley: What is the number of that line?

Mr. Graves: 3015.

A. It should be the second one.

Judge Allred: It is the next to the last one in mine.

Mr. Graves: It is the line from El Paso to Albuquerque.

Judge Sibley: I have got it.

By Mr. Graves:

Q. The train operates between El Paso and Albuquerque?

[fol. 141] A. Yes, sir.

Q. And the porter operates all the way from El Paso to Albuquerque?

A. Yes, sir.

Q. And the distance in the State of Texas covered by that operation is what?

A. 18 miles.

Q. From El Paso to LaTuna?

A. Yes, sir.

Q. Leaves El Paso at 10:15 P. M. and arrives at La Tuna, the border line of Texas and New Mexico, at 10:15 P.M.?

A. Yes, sir.

Q. And returning, it evidently leaves Albuquerque at night and arrives at LaTuna at 6:50 P. M. and El Paso at 7:30 P. M.?

A. Yes, sir.

Q. In complying with the order, what would you have to do with respect to that line?

A. We would have to operate a conductor locally out of El Paso. He would make the round trip each night, up in the evening and back in the morning.

Q. Mr. Vroman, do you know what the average number of passengers is on these trains?

Judge Sibley: Which ones, now?

Mr. Graves: I want to find out if, he is prepared to answer that question as to all of them.

A. I know what the average number of passengers are on a good many of them. I don't know all of them.

Q. Do you happen to know about the average number of passengers on that Fort Worth to Ennis car and also on the El Paso to LaTuna?

[fol. 142] A. I don't know about El Paso and LaTuna, but the Fort Worth and Houston is a pretty light line. I think they average about four or five beds a night.

Q. If the Court will indicate which one of the maps is next in order, I will take up that line.

Judge Sibley: From Marshall to Little Rock.

Judge Allred: 3531.

By Judge Graves:

Q. The line known as Pullman line 3531 operates from Fort Worth to Memphis; the train operates from Fort Worth to Memphis. The porter is in charge going north on that line between Marshall and Texarkana, a distance of 67 miles?

A. Yes, sir.

Q. The train leaves Fort Worth at night and arrives at Marshall at 2:20 A. M., and at Texarkana at 4:10 A. M.?

A. That is right.

Q. As a matter of fact, the porter goes on in charge of that car to Little Rock?

A. Yes, sir.

Q. But the portion of it in the State of Texas is this 67 miles. That is a one-way operation. The line is in charge

of a conductor returning from Memphis, as I understand it?

A. That is correct.

Q. What would you have to do in regard to that line to comply with this order?

A. We would have to station a conductor and probably operate him out of Fort Worth down as far as Marshall, to come back on that line.

Q. How many additional conductors would you have to employ?

[fol. 143] A. One conductor. It would be one and a fourth. We would have to give him relief, the same as any other lines.

Q. What do you mean by relief?

A. That is by using an extra conductor every fourth day. Conductors on a night run must be relieved every fifth day. In other words—every fifth day, it is necessary to furnish an extra man to make these what we call relief trips.

Q. All of these lines appear to be round trip lines, with the exception of two of the Texas & Pacific lines. That is, that 3531 that you have just described, and the other T. & P. line, 3501?

A. That is right.

Q. And they operate in charge of a porter only one way?

A. That is right.

Q. If the Court will indicate the next map, I will inquire about that, and save the Court the trouble of going through those maps.

Judge Sibley: 3106.

A. 3106 is the—the porter is shown in charge—he is really in charge from Amarillo to Denver. We merely show the Texas operation, 7:55 A. M. to 11:03 A. M. north-bound, and 7:00 P. M. to 11:45 P. M. south-bound. That also is a one car operation, and during the winter season it travels pretty light, and for a number of years we have operated a porter in charge of it during the daylight operation.

Judge Sibley: We customarily take a little recess between the morning and noon session. We will take one now for five minutes.

[fol. 144] (Thereupon, court was recessed at 10:45 A. M. until 11:05 A. M.)

Judge Sibley: Go ahead, sir.

By Mr. Graves:

Q. The question, Mr. Vrooman, that we had up was in relation to line 3016 or 3106. 3106, wasn't it?

A. Yes, sir.

Q. From Dallas to Denver?

A. That is right.

Q. That is where the train goes?

A. That is right.

Q. And the porter in charge, part of the operation is from Amarillo to Denver?

A. Yes, sir.

Q. Both ways?

A. That is right.

Q. The porter in charge of operation in there is from Amarillo to Texline, a distance of 117 miles?

A. That is correct.

Q. And the schedule at present is leaving Amarillo at 7:55 A. M., arriving at Texline at 11:03 A. M.?

A. Yes, sir.

Q. And returning, arrive at Texline—leave Texline at 7:00 P. M. and arrive at Amarillo 9:45 P. M.?

A. Yes, sir.

Q. A distance of—

Judge Sibley: You said that was a one car run?

A. Yes, sir.

By Mr. Graves:

Q. Are all of these lines that we have inquired about so far one car lines?

A. Yes, sir.

Q. One Pullman car?

[fol. 145] A. Yes, sir, all of the porter in charge operations in Texas are one car lines.

Judge Sibley: What becomes of the train at Amarillo?

A. That train continues through to Denver. We simply show the operation in Texas. It is a through run from Dallas to Denver.

Judge Sibley: Just one car all the way?

A. Yes, sir, one car north of Amarillo. We have another car as far as Amarillo, and we operate a conductor that far,

but when we drop one car, we discontinue the conductor operation.

By Judge Graves:

Q. You have what you call a set-out at Amarillo?

A. Yes, sir.

Q. And the conductor there stops on that set-out car at Amarillo?

A. That is right. It isn't what we generally consider a set-out car. What we generally term a set-out car is a car that arrives early in the morning, and the passengers sleep there. It isn't what we call a set-out car that provides for occupancy.

Q. That is a seasonal operation, your porter in charge operation?

A. Yes, sir.

Q. And at the time this matter was heard before the Railroad Commission last August, that car was being operated in charge of a conductor?

A. Yes, sir.

Q. And ordinarily, there was more than one car on the train?

[fol. 146] Q. Yes, sir, we have extra lines during the summer, and the conductor operation north of Amarillo was discontinued when the summer lines were discontinued.

Q. When the summer tourist traffic from Texas to Colorado is heavy in the summer months you carry extra cars and a conductor?

A. Yes, sir.

Q. And when it is light, you have a porter in charge of the operation?

A. That operation has been in effect, I think, that way, for ten years.

Q. The next line on the map is line 3748 from Dallas to Corpus Christi. It is the fourth line shown on Exhibit G, over the San Antonio, Uvalde, and Gulf Railroad, a part of the Missouri Pacific system, and that seems to be a day operation, both ways.

A. That is right.

Q. A distance of 150 miles between San Antonio, and Corpus Christi?

A. That is right.

Q. Do you happen to know whether that is a light or a heavy traffic line?

A. That is a very light line south of San Antonio. It has considerable business between Fort Worth and San Antonio, but from San Antonio to Corpus it is very light.

Q. Do you know what the average number of passengers hauled in that car per day is?

A. A recent check showed that—I have got the figures here for a thirty day period, and it shows an average of two passengers south-bound and three passengers north-bound.

Q. What would a conductor have to do if you put him on [fol. 147] that train?

A. Well, I really don't see that there would be much for him to do.

Q. The next one is line 3010, and it appears in two places on Exhibit G, for the reason that it operates in charge of a porter at two different points. That train, as I understand it, is a train between New Orleans, Louisiana, and Oakland, California?

A. That is the points that the car operates, and it operates on a number of trains. It isn't a through train.

Q. Well, as far as the car is concerned, it is a through car?

A. Yes, sir.

Q. It starts at New Orleans and ends up at Oakland?

A. Yes, sir.

Q. And returning, it starts at Oakland and ends up at New Orleans?

A. Yes, sir.

Q. Let's take the Missouri Pacific part of it, and the train comes out of New Orleans and arrives at the Sabine River, the border line in Texas, at 4:20 P. M., and arrives at Houston at 7:25 P. M.?

A. Yes, sir.

Q. A distance of 117 miles?

A. That is right.

Q. And on the return trip, it leaves Houston at 8:20 A. M. and arrives at the Sabine River at 11:20 A. M. While we [fol. 148] are considering that line, at the bottom of Exhibit G, the next to the last line on this supplement that was added to Exhibit G, appears another portion of it covering that part of the line that is operated over the line of the Panhandle and Santa Fe Railway Company, reaches Sweetwater at 10:20 A. M. and arrives at Texico at 3:40

P. M., and returning it leaves Texico at 1:53 P. M. and arrives at Sweetwater at 7:00 P. M.?

A. Yes, sir.

Q. That appears to be a daylight operation?

A. Yes, sir.

Q. That train carries mostly local traffic, I take it?

A. Yes, sir, it does.

Q. In other words, from New Orleans to Oakland, California, it doesn't carry any through passengers, to speak of?

A. No, that is right.

Q. It carries a Pullman conductor in the State of Texas between Houston and Sweetwater?

A. That is correct. We have another car on the train as far as Sweetwater.

Q. And it is a one car operation for the other portion of the run?

A. Yes, sir.

Q. Where there is no conductor?

A. Yes, sir.

Q. The next line is 3175 from Shreveport, Louisiana, to Kansas City, Missouri. That is over what railroad?

A. Kansas City Southern.

[fol. 149] Q. It appears on Exhibit G the third line from the bottom on the second page, page 85; that line appears to operate in charge of a Pullman porter all the way from Shreveport to Kansas City.

A. That is correct.

Q. Is that a light run?

A. Yes, sir, it is.

Q. A one car run?

A. Yes, sir, the entire distance.

Q. And it cuts across a corner of the State of Texas between the little town of Bloomberg and Red River?

A. Yes, sir.

Q. A distance of 31 miles?

A. That is correct.

Q. What would you have to do to comply with that order in regard to that line?

A. We would have to station a conductor up there and cover that short territory.

Q. I should have asked you what would you have to do to comply with the order in respect to line 3010, which is from New Orleans to Houston.

A. Well, that would take a conductor at each end, a conductor to operate between New Orleans and the Sabine River, and it would be necessary to extend a conductor's operation that now terminates at Sweetwater. That would take an additional man at that end of the run, too.

Q. Now, line 3309, which appears at the sixth line on the first page of Exhibit G, is an International Great Northern Railroad Company line. The train operates between Galveston [fol. 150] and St. Louis. Is that correct?

A. Yes, sir.

Q. Over what part do you operate the car in charge of a porter?

A. Between Galveston and Houston in both directions, a distance of 50 miles.

Q. Do you know whether that is a light or a heavy line?

A. It is a very light line between Houston and Galveston. It does a pretty considerable business north of Houston.

Q. Leaves Galveston 10:30 A. M. and arrives Houston 11:59 A. M.?

A. Yes, sir.

Q. On return it leaves Houston 1:10 P. M. and arrives Galveston 2:40 P. M.?

A. Yes, sir.

Q. What would you have to do to comply with the order on that line?

A. On that run we would extend the present conductor's operation, which is between Houston and Palestine, through to Galveston, and cut his lay-over in Houston on the return trip. It would take a half man to cover that portion of the trip.

Q. Now, this is line 3265 between San Antonio and Kansas City. That is the first line described at the top of page 85 of Exhibit G, Missouri Kansas Texas train, and that is a daylight run between San Antonio and Fort Worth?

A. Yes, sir.

Q. That train carries a porter, doesn't it; only in charge of the car between San Antonio and Fort Worth north-bound?

A. Yes, sir.

Q. And a porter in charge between Waco and San Antonio southbound?

[fol. 151] A. Yes, sir.

Q. From 1:30 P.M. to 9:45 P.M. on the north-bound trip and from 3:35 P.M. to 9:00 P.M. on the south-bound trip?

A. Yes, sir.

Q. Is that a relatively light run, as compared with these other runs, or a relatively heavy run?

A. It does more business than these other lines. This is probably one of the heavier in charge lines in Texas.

Q. A conductor, then, accompanies that train north from Fort Worth to Kansas City, a Pullman conductor?

A. Yes, sir.

Q. And a Pullman conductor accompanies the train south from Kansas City to Waco?

A. Yes, sir.

Q. What would you have to do to comply with the order in respect to that line?

A. We would probably operate the conductor through to San Antonio, extend the conductor's operation from Kansas City to San Antonio, which would cover that territory from Waco to San Antonio and return, and operate a man locally out of Fort Worth to cover the territory running north. That would be two conductors.

Q. Two added conductors?

A. Yes, sir.

Q. The next one is 3723, and we have already covered that in your testimony, haven't we? That is the Brownsville train?

A. Yes, sir.

[fol. 152] Q. The next one appearing in the maps is line 3258. That is the third line on the second page of Exhibit G?

A. I would like to explain in connection with that that this line since these proceedings have started has been shortened to Fort Worth. It is not now operated between Fort Worth and Wichita Falls, it operates between Houston and Fort Worth rather than Houston, Wichita Falls.

Q. You mean the Pullman car operates there?

A. Yes, sir.

Q. Since this hearing was held before the Railroad Commission in August the Pullman car has been withdrawn from the train between Fort Worth and Wichita Falls?

A. That is correct. I think January 9th was the date, if I am not mistaken.

Judge Allred: Is there one still operating to Dallas?

A. Yes, it operates to Fort Worth, between Fort Worth—or between Houston and Fort Worth.

Judge Allred: I am talking about between Wichita Falls and Dallas.

A. No, sir, I don't think so.

Q. So that isn't presently involved, although it was involved at the time of the hearing before the Commission?

A. That is right.

Q. The next one is 3424. It is about the center of the page on page 85, a Frisco train operating between, train operating between Galveston and Tulsa, a porter running in charge between Denison and Tulsa?

A. That is right.

[fol. 153] Q. And part of the porter in charge run is in the state of Texas, between Denison and Platter, a distance of eleven miles?

A. That is right.

Q. And returning the same way. It seems to be a daylight operation for the part of it in Texas?

A. Yes, sir.

Q. But it is an overnight run in charge of a porter?

A. That is right.

Q. What would you have to do in respect to that line?

A. On that run we would extend the conductor's operation to Platter. The present conductor terminates—the operation terminates at Denison, and we would merely extend that operation to Platter.

Judge Sibley: That conductor doesn't go on with the train?

A. No, sir, he does not.

Q. Well, the conductor that runs as far as Denison goes on with the MK-T train north, doesn't he?

A. No, sir, he does not.

Q. The train splits up there?

A. That is right, it splits up there and that is merely to protect that Fort Worth section of the run. The conductor that handles—well, I won't say that, but the conductors, most of the conductors on the Katy operate via Dallas, and the run on the Fort Worth branch is protected largely by the local men. This happens to be a San Antonio man that runs as far as Denison.

Q. Now, the next appearing is 3273, the next appearing [fol. 154] on the maps, another MK-T run, train operating between San Antonio and Kansas City, and the Pullman

car in charge of porter between Denison and Kansas City?

A. Yes, sir.

Q. The portion of the porter in charge operation in Texas seems to be a distance of about seven miles?

A. That is right.

Q. Each way?

A. That is right.

Q. That is the fourth one of the Katy lines mentioned on page 85.

Judge Sibley: Does that conductor stop at Denison or go somewhere else?

A. Yes, sir, he stops at Denison.

Q. Now, apparently the porter operates in charge of that car from Denison to Kansas City and then back from Kansas City to Denison?

A. That is right.

Q. So he doesn't see a Pullman conductor over that distance of 806 miles?

A. Well, I don't think it is 806 miles, is it?

Judge Sibley: To and from.

Q. Then your map is wrong if it isn't.

A. I haven't got a map here. I didn't think the distance was quite that great.

Q. But if he does—

A. Yes, sir, he operates to Kansas City, whatever the distance is.

Q. Seven miles of it in Texas?

[fol. 155] A. That is right.

Q. Did you say what you would have to do about that line?

A. We would have to put a conductor up there to protect that short distance.

Judge Sibley: Couldn't you make him live at Red River? Why couldn't you do that?

A. I can't answer that, Judge.

Q. Well, the point that I wanted to inquire about is whether you would have to put another conductor on to serve that line?

A. Frankly I can't answer that definitely from memory. I have some records on it, but I can't answer just what the arrangement was to protect that.

Q. You don't know whether you have counted an extra conductor among your list?

A. I have the records in my file.

Mr. Graves: Unless the court wants to know about it I won't stop to ask him to look it up now.

Q. You might supply that later.

A. Yes, sir.

Q. The next one we have here, Mr. Vroman, is line 3501, a line that operates, the train operates from St. Louis to El Paso and El Paso to St. Louis over the T & P, and apparently it operates in one direction in charge of a porter, between Texarkana and Marshall, leaving Texarkana at 3:00 p. m. and arriving at Marshall at 4:25, a distance of 67 miles?

A. Yes, sir.

Q. What would you have to do to supply that?

[fol. 156] A. That and the next one, 3501 and 3531, are both one way operations. We would operate a conductor out of Little Rock down to Marshall to handle 3501 southbound and return him in 3531. That would be a man and a half operation for the two lines.

Q. The next one is line 3076, between Amarillo and Oklahoma City, known as the Rock Island, down at the bottom of the first page of Exhibit G?

A. Yes, sir.

Q. And that operates with a porter in charge for the entire distance of the train?

A. From Oklahoma City to Amarillo, a night run.

Q. It is an overnight train?

A. Yes, sir.

Q. Both ways?

A. Yes, sir.

Q. The distance in Texas is 112 miles?

A. That is correct.

Q. What would you have to do to supply that operation?

A. We would operate a conductor locally out of Amarillo over to a meeting point, which would probably be some point beyond Texola, and back on the return trip, leaving there at 4:23 in the morning.

Q. The next one is line 3251 between St. Louis and Waco, Fort Worth, St. Louis and Waco, on the MK-T. It is the second line shown on the top of page 85 in Exhibit G.

A. Yes, sir.

[fol. 157] Q. Operates with a porter in charge between Fort Worth and Denison going north and between Denison and Waco south, is that right?

A. That is right.

Q. A distance of 96 miles northbound and 186 miles southbound?

A. Yes, sir.

Q. What would the compliance with the order occasion in respect to that line as to conductors?

A. That is another one I am not clear on from memory. If you would like to have me look at my records. I ought to have them here, but I didn't bring them with me. I have them in my portfolio there. I think that southbound, that is covered by the conductor who would—no, I guess it isn't. With your permission I would like to look up and see what the condition is, if it is important.

Q. Just do that later. We won't stop to do that now.

A. Yes, sir.

Q. Next is line 3015, from El Paso to Albuquerque, and you have already testified about that?

A. Yes, sir.

Q. The next is 3370, a line operating between Dallas and Memphis over the Cotton Belt?

A. Yes, sir.

Q. And it appears—

A. That is a through porter in charge operation between Dallas and Memphis, and we would have to operate conductors locally out of Dallas to Texarkana and back.

[fol. 158] Q. Now, that operates without a conductor and in charge of a Pullman porter between Texarkana and Dallas going south and Dallas and Texarkana going north?

A. Without a conductor the entire distance..

Q. That is the part of it in Texas where you have no conductor?

A. Yes, sir, that is right.

Q. So that car travels without a conductor for a distance of 193 miles in Texas, plus the distance of Texarkana to Memphis, which is according to this map 289 miles?

A. That is correct.

Q. Do you recall what you would have to do to comply with the order in respect to that line?

A. I think the figures show we would have to operate a conductor and a half on that.

Q. The next line is line 3128 between Fort Worth and Houston, and you have already testified about that?

A. Yes, sir.

Q. I believe that covers all of these lines, doesn't it, Mr. Vroman?

A. I think it does, yes, sir.

Q. All of the lines that are being operated in the State of Texas in charge of porters are shown in Exhibit G attached to the complaint?

A. Yes, sir.

Q. And one of those lines shown in that exhibit, 3258, is not now being operated with a porter?

[fol. 159] A. That is correct.

Q. In fact, you have discontinued the line between Fort Worth and Wichita Falls?

A. That is correct.

Q. Do you recall whether the railroad company requested the discontinuance of it?

A. It is my understanding they did.

Q. On account of the—

A. We received notification that they had discontinued that part of the line, shortened the operation.

Q. Mr. Vroman, the order that is being challenged in this suit states, among other things, that the Commission has found that where these cars are operated in charge of negro porters, that the women passengers on these lines are in danger of being insulted. Now, that is the allegation. I want to ask you if you have had occasion to examine the records of the porters operating as porters in charge in Texas for a period of say five years back?

A. I did.

Q. What is that record with respect to the action of the porters themselves, as to their treatment of the passengers?

A. We have not had a single case involving a porter in charge operation in Texas during that period.

Q. When you say you have not had a single case you mean you have not had any complaints?

A. Any serious complaint in the nature of an assault or mistreatment or discourtesy or anything of that sort. We always have reports of passengers carried by on conductor runs and porter in charge runs; occasionally, I say we get [fol. 160] some of them, but I say nothing that would reflect against the actions of a porter toward a woman passenger.

Q. All right, the order also contains a finding to the effect

that women passengers, as well as the other passengers, are in danger of being insulted and in danger of bodily harm from other passengers on the train, particularly those who may be under the influence of liquor. Have you examined the records to determine whether anything like that has occurred on these porter in charge lines in Texas?

A. There has been nothing on porter in charge lines. The records showed we did have five such cases on trains where we operated conductors. It just so happened that way. We have had no reports of that sort on porter in charge lines.

Q. These other cases you speak of, is that during the past five years?

A. Yes, sir.

Q. It covers the same period?

A. That is right.

Q. I will ask you to state whether the rules of the railroad company require the railroad train men, that is, the conductors and brakemen, to report incidents of that kind or any other incidents affecting passengers?

Mr. Culbertson: Now, if the Court please, we object to that as being hearsay evidence. The rules of the railroad would be the best evidence.

[fcl. 161] Judge Sibley: I think you are perfectly right about it.

Mr. Culbertson: They are published rules, and we would like to have them in evidence.

Q. What would be the added expense to the Pullman Company involved in employing the additional conductors that would be required to supply these lines, if you had to comply with the challenged order?

A. \$41,000.00; \$41,600.00.

Judge Sibley: What length of time does that cover?

A. I beg pardon?

Judge Sibley: What length of time is that?

A. For a year.

Q. Per annum?

A. Yes, sir.

Q. That would be the additional Pullman conductors' salaries the company would have to pay out?

A. Yes, sir, on the basis—we use a flat average of \$2400.00 a year. Their rates, they are on a scaled basis depending on their length of service, and \$200.00 a month we figure is a fair average.

Q. All right, that would be the expense of that kind. Would you save any expense by reducing the porters' salaries?

A. Yes, we would save approximately \$5,000.00.

Q. In other words, of the \$41,000.00 that you would pay the conductors you would have to take \$5,000.00 of it away from the porters?

[fol. 162] A. That is right.

Q. Now, do you know whether any of that would ultimately be passed on to the railroads?

A. That is an accounting matter, but I understood it would, some portion of it. I am not prepared to say to what extent it would.

Q. Mr. Bradish is here?

A. Yes, sir.

Q. And he can give us the figures on that?

A. Yes, sir.

#### Cross-examination.

##### Questions by Mr. Morgan:

Q. Mr. Vroman, you say it costs \$2400.00. Is that the average for each conductor?

A. Approximately, yes, sir.

Q. What is the maximum for each conductor?

A. \$205.00.

Q. What is the minimum?

A. \$172.00.

Q. How do you arrive at the figure of \$200.00 as being the average?

A. Well, we have employed no conductors for ten years; and they are all of them in the higher wage brackets.

Q. You haven't hired any new conductors?

A. I say not any. I know we took up one man at Cincinnati, but we haven't employed very many, two or three at some places.

[fol. 163] Q. Has that been occasioned by a program of taking off conductors and substituting porters in charge?

A. No, sir.

Q. Now, then, Mr. Vroman, the rank and position of a Pullman porter as provided in the order; you are of a rank and are an assistant to the vice-president and you are superior to the conductors, aren't you?

A. Well, I guess you would term it that way.

Q. All of these gentlemen that Mr. Carry testified about being over the conductors, they have a rank and position at least equal to the conductor, do they not?

A. Yes, sir.

Q. All right. Now, then, I will ask you if it has not been a custom in Texas and in your system all over that when it was necessary for you to comply with a rule or regulation such as this that you proceeded to pool the runs of the various conductors?

A. No, that is not right.

Q. That isn't right?

A. No, sir.

Q. You have a man employed, each conductor, for 240 hours per month?

A. That is the basic month's work.

Q. You have a right to call on his time for that much, do you not?

A. That is right.

Q. That means eight hours a day for thirty days a month? [fol. 164] A. That is correct.

Q. Less the time he lays off, which is included. That means you can use his time, then, 240 hours per month?

A. That is right.

Q. And you can use that at such place or such advantage as you deem best, can't you?

A. No, I wouldn't say so.

Q. Why can't you use that, Mr. Vroman?

A. Well, a man that is in a regular assignment, we make up a schedule showing what his operations would be. Now, if we use him beyond that we would expect to have to pay him for that.

Q. You mean if you worked a man 180 hours on a regular assignment per month and then you used him on some short run you would have to pay him for that short run?

A. Extra, yes, sir.

Q. You mean you can't pool his run with some other run and use the entire 240 hours?

A. No, I don't mean that. We can pool certain classes of runs. We don't pool night runs, but like this run from

Palestine down to Houston and then on to Galveston, we could extend that operation down to Galveston or pool it up, but we couldn't pool night runs with any other runs.

Q. Well, that is the one exception that is provided in the contract between the Pullman Company and the Pullman conductors, isn't it?

A. That is right.

[fol. 165] Q. Other than that one exception you can pool them, can't you?

A. Yes, we can pool certain types of runs, but there are few, very few pools throughout the whole country.

Q. Isn't that a matter of working out the schedule of each conductor? By pooling you simply mean you work out his schedule?

A. That is right.

Q. Let us say a man that may run from Fort Worth to Kansas City and back, let us say he uses 200 hours a month doing that. If you desired to you could work out his schedule where he could make a schedule down to Ennis and back if it worked out properly with his other run?

A. No, sir.

Q. Why not?

A. Under our agreement we can't pool long and short runs to build up the hours to get the maximum hours of 240.

Q. Let's say if a man runs from Fort Worth to Abilene and back and he uses on that run 200 hours per month, could you use his run from Fort Worth to Ennis and back, could you use him on that run?

A. No, sir.

Q. Why?

A. Under the agreement that is a one night run up to Amarillo. We can't pool that up with anything.

Q. What can you pool then, Mr. Vroman?

A. Well, like this day run down to Corpus Christi, if we had another run from San Antonio up to—a day run over [fol. 166] to Houston, for instance, we are not restricted on pooling when it comes to daylight operations.

Q. All right, how about one on down to Brownsville?

A. It wouldn't run to Brownsville. The Brownsville is a night run from Harlingen on down. How would you get the conductor down there? You can't pool runs unless they come together.

Q. Assuming they come together. Some in San Antonio come together?

A. Yes, sir.

Q. And you could pool those runs?

A. Yes, sir.

Mr. Graves: I beg your pardon, that train doesn't run through San Antonio.

Mr. Morgan: I didn't have any particular train in mind.

A. That is strictly theoretical. But if he did, if they did come together, you could pool them.

Q. In Houston you have a number of trains that are affected by this order that do go through Houston, don't you?

A. Not very many.

Q. The one from Galveston up to Houston?

A. Yes.

Q. Houston across the Sabine River?

A. Yes, sir.

Q. One from Houston across to Denison?

A. Yes, sir.

Q. Now, would it be possible to pool any of those runs of the various conductors?

[fol. 167] A. What would be the advantage of pooling them; if you run a conductor over to the Sabine River and back you have another operation down to Galveston that involves the same hourage. You couldn't pool them to advantage.

Q. Heretofore you have done that, haven't you, Mr. Vroman?

A. Not unless there was some advantage.

Q. I understand, but where there was advantage?

A. Yes, sir, we have pooled some day runs.

Q. Isn't it true some of your conductors don't run over 180 or 200 hours per month?

A. Yes, sir.

Q. Therefore, if you should decide to try to work out a schedule you have a call on their time without additional compensation for the 240 hours per month?

A. No, I don't think so. I will say definitely that we do not. There is nothing to be gained by pooling two one night runs. It only mixes up an operation for no purpose.

Q. All right. Now, in Texarkana alone there are three lines that go through there. Would it be possible to pool any of those together? Have you studied that, Mr. Vroman?

A. I studied those two. We have two one way lines.

Q. Would it be possible to pool those?

A. I think so. I think you could pool those two.

Q. All right, if you pool those two it wouldn't require an additional conductor, would it?

A. I pooled these two together and used a conductor and a half for the two runs. They are both of them one way. It simply makes a round trip operation.

[fol. 168] Q. Now, then, when you are talking about these various different lines about which your counsel has gone over in detail, you are taking into consideration the cost as to that particular operation, aren't you?

A. That is right.

Q. And that is all you are taking into consideration, isn't it?

A. That is right.

Q. Now, I believe you said you studied this order and its effect. There is a provision in this order: "It is further ordered by the Railroad Commission of Texas that in any case where it is the desire of any railroad company, receiver or trustee to operate over its line of railway a sleeping car or cars without fully complying with the provision of the orders above set out, the Commission shall be notified and its consent secured before such change or deviation from the terms of said orders is put in force." Now, then, have you made application to the Commission as to the operations on any of these particular lines for relief as to that particular part of it?

A. Well, I think our legal people would have to answer that. I don't handle matters of that sort.

Q. I just asked you if you know, Mr. Vroman?

A. No, I don't know.

Q. All right. Now, when did you take off on this Brownsville run, or did you ever have a conductor in charge there, sir?

A. I don't think we ever did.

Q. You don't think you ever did?

A. No.

[fol. 169] Q. Has that always been a porter in charge run?

A. I think so.

Q. A porter in charge run?

A. I wouldn't say definitely about that, Mr. Morgan, but I know it has been a porter in charge for many, many years.

Q. Down at Brownsville you have three railroads, don't you?

A. I think the S. P. and the Gulf Coast line are the only ones that I know that run in there.

Q. How about Harlingen, aren't there two or three railroads in there?

A. Just the same there, I think.

Q. How about this run to Ennis, when did you take the conductor off that run?

A. The same operation has been in effect for twelve or fifteen years at least.

Q. Porter in charge, you mean?

A. Yes, sir.

Q. How about the El Paso across to Albuquerque?

A. That was recent, early in 1939.

Q. How did you handle that before, Mr. Vroman?

A. We had a conductor.

Q. Where did he run from?

A. El Paso to Albuquerque.

Q. And return?

A. Yes, sir.

Q. And on account of the expense you took him off, is that correct?

A. Well, it was felt—it is a one car operation. It used [fol. 170] to have about three cars on there, but it has been deteriorating year after year and it got down to a one car operation, and we felt it wasn't needed.

Q. Now, El Paso has three railroads, doesn't it?

A. Yes, I believe so.

Q. Isn't that a terminal point of railroads there?

A. No, I don't think so.

Q. Isn't that the place where your Pullman conductors live? They operate out of there?

A. I think we have five conductors there.

Q. Have you thought of the possibility of rearranging their schedules so you could use one of those conductors on this particular run?

A. We don't think he is needed. They formerly had it. That is the reason we took him off.

Q. I understand. Now, then, the one from Amarillo to Denver, when did you take that run off?

A. What was the question, Mr. Morgan?

Q. The one from Amarillo down to Denver—from Denver down to Amarillo.

A. I can't remember the exact date. It was early in September, though, after the summer lines came off.

Q. All right. That is, in the winter time, then, you don't have a conductor?

A: That is right.

Q. Well, you govern that, then, by the number of passengers you have, is that the way you do it?

A. The requirements of the service.

[fol. 171] Q. Now, from Dallas to Corpus Christi, you say you don't have a conductor on that run?

A. No conductor between San Antonio and Corpus. We have one to San Antonio.

Q. How long ago did you take him off?

A. That has been a porter in charge run for many years, too.

Q. How about the one from New Orleans to Oakland, California? When did you take that off?

A. Early in 1939.

Q. That is the second one, I believe, you testified about you have taken off in 1939?

A. That is right.

Q. What did you do prior to that time on that run?

A. It was a conductor operated run between Houston and New Orleans.

Q. Oh, he operated all the way from New Orleans to Houston?

A. That is right.

Q. I believe you testified awhile ago that you made a thirty day test of some sort regarding this run from Corpus Christi?

A. Yes, sir.

Q. When was that test made, Mr. Vroman?

A. The figures were for December.

Q. Of this last year?

A. Yes, sir.

Q. All right. Now, then, with reference to this run from Shreveport to Kansas City, when did you make that a [fol. 172] porter in charge run?

A. It has been a porter in charge run for four or five years. That is like a good many of these others, they used to have a good many cars in the train and finally it dwindled down to one and they have been porter in charge since.

Q. Galveston to Houston, when did that become a porter in charge?

A. That has been a porter in charge for twelve or fifteen years, too.

Q. The one from Kansas City to San Antonio, when did you make that a porter in charge?

A. This last February.

Q. Within the last year?

A. Ye sir.

Q. That is the Katy that runs out of San Antonio through Austin and Waco and on up this way?

A. Yes, sir.

Q. It runs through this city here?

A. Yes, sir.

Q. And that is a very heavy train, heavy traffic?

A. Some portions I believe quite heavy.

Q. You serve the universities that are located up along the road, the University of Texas, Baylor, and other universities, don't you?

A. I expect we do.

Q. And you say you took that off in 1939?

A. That is right.

[fol. 173] Q. Now, then, where was your conductor prior to that time or where did he run from?

A. He ran from Kansas City to San Antonio.

Q. Now, then, the one from Houston to Fort Worth, formerly the Wichita Falls run, has that been taken off entirely?

Mr. Morgan: Do I understand that, Judge?

Mr. Graves: The porter in charge has.

Q. You have recently changed back to a conductor on that, have you?

A. It always did have a conductor in charge as far as Fort Worth, and we discontinued the sleeping car service between Fort Worth and Wichita Falls.

Q. All right. On the Frisco, then, from Galveston to Tulsa. When did you take the conductor off that run?

A. That has been a porter in charge operation for many years, too.

Q. Now, this other Katy run from San Antonio to Kansas City, when did you take that off?

A. I can't tell you on that definitely, Mr. Morgan: It has been a porter in charge operation for a long time though.

Q. Well, hasn't it been within the last two or three years?

A. It might have been three years ago. They have changed that run over there so much that I am not clear as to just when it was made. We now have a car that operates to Waco and dead-heads up to Fort Worth, and I think it is pretty involved operation, and I don't recall the details of it offhand.

Q. All right, this run from St. Louis to El Paso on the [fol. 174] T. P., when did you take that conductor off?

A. That is much the same thing. The T. P. has changed their service a good bit, but the porter between those points, to my recollection, has been in charge a long time.

Q. Hasn't that been relatively recent? I mean within the last two or three years?

A. No, sir, I don't think so.

Q. All right, how about the one from Amarillo to Oklahoma City, when did you take that conductor off?

A. Well, I would say approximately two or three years ago.

Q. All right, sir. Now—

A. That is much the same as the others. They had other lines out of Oklahoma City until up to that time.

Q. How about the run on the Katy from Fort Worth to Waco? That is a recent one, isn't it?

A. Well, that is the one that I spoke of that I said the line stops. That is 3251. That stops at Waco and then runs up to Fort Worth, and I can't tell you offhand how long that has been, but it is not recent. It is not in 1939.

Q. Are you sure of that, Mr. Vroman?

A. I am pretty sure of it, yes, sir.

Q. All right, how about the one from Dallas to Memphis?

A. That was in the early part of 1939 or the latter part of 1938. That is the Cotton Belt, you mean?

Q. Yes, sir.

A. Yes, sir.

[fol. 175] Q. Well, then, in your operations in Texas, out of the seventeen, or now sixteen, operations complained of that you have set forth in your bill of complaint, five or six of them at least are operations that have been changed within the last year, and others within the last two or three years, is that correct?

A. I think there are four this last year, if I am not mistaken.

Q. Well, the tendency is more and more, isn't it, Mr. Vroman, to do this in your entire system?

A. No, I wouldn't say so, Mr. Morgan. It all depends on the discontinuance of lines. As I testified this morning, our service is about fifty per cent what it was some years ago, and naturally these cars have to come off some trains, and changed conditions have brought about changes in the conductor operations.

Q. Over your entire system you have done this same thing, haven't you?

A. Well, it has been more pronounced in some sections than others. Our business in some sections hasn't fallen off as much as it has in others. There is no hard and fast rule. We are simply governed by the make up of the trains and the requirements of the service.

Q. You mentioned awhile ago something about some conduct on the train, some five cases, I believe you said?

A. Yes.

Q. I didn't understand just what occurred. Was that between passengers?

A. That is right.

[fol. 176] Q. And who made that report?

A. The conductor, I think.

Q. All right, Mr. Vroman, are you suggesting to this court that in the event of misconduct between passengers on the train that a porter is as well qualified to handle that situation as a conductor would be?

A. Absolutely, unqualifiedly.

Q. You think if a man on the train is conducting himself improperly by reason of drink or otherwise that a porter could handle the situation as well as a conductor?

A. Mr. Morgan, I think he handles it better. A porter has more tact in handling a drunken passenger or a passenger who is misconducting himself than a conductor has. If he pukes all over the floor the porter is going to wait on him and he has more persuasion than the ordinary conductor.

Q. I see. All right. Now, then, I believe under your contracts that you are talking about you get a fixed sum before the railroad participates in the profits, isn't that correct?

A. Naturally, Mr. Morgan, I am not altogether familiar with the contracts. I would sooner you would ask some of

our accounting people about that. I know in a general way, but I don't know all' about it.

Q. You have those gentlemen here in attendance who will testify in this case?

A. Yes, sir.

Redirect examination.

Questions by Mr. Graves:

Q. In giving your statement as to the number of conductors that would be required to supply these lines if they were converted into conductor lines, I will ask you whether [fol. 177] you have made a study of the pooling problem as well as all other problems that would be involved?

A. Yes, sir, I have.

Q. And you have attempted to work out an arrangement that would be the most equitable and most satisfactory?

A. Absolutely. I think I explained to you in that run down to Galveston we were able to couple that up with the present operation and simply add a half man.

Q. Are the Pullman conductors under the same kind of supervision from district supervisors, agents, inspectors and so forth as are the porters?

A. Just the same, the same instructions and same supervision.

Q. Now, you stated a moment ago that you hadn't hired any new conductors for something like ten years. Have you hired any new porters?

A. Yes, sir, we have hired some porters, probably two or three hundred maybe.

Q. What is the ratio of porters to conductors, about how many porters are there on the lines as compared with the number of conductors?

A. Well, we have about 9,000 porters and about 1,700 conductors, and I can't tell you the number required to fill regular lines offhand, the number required to fill regular lines of porters and conductors too.

Q. Do you happen to know whether there have been any new porters hired in Texas?

A. None whatever.

Q. None whatever?

[fol. 178] A. None whatever,

Q. All of the porters that are operating in Texas, whether in charge or on your conductor lines, are old porters?

A. Ten years or better. Most of them are free uniform men.

Judge McMillan: Free what?

A. I say free uniform men. In other words, we furnish free uniforms after ten years service.

Q. This day run that Mr. Morgan referred to on the Katy as being a very heavy run operates how many Pullman cars between San Antonio and Fort Worth?

A. One.

Q. And then returning between Waco and San Antonio?

A. One both directions. One car both directions between Waco and San Antonio. They pick up another car at Waco. All of these runs are one car operations throughout the entire porter in charge operations.

Mr. Graves: I will say this to the court, if I may be permitted, and to counsel, that I don't care to pursue this matter any further of how many conductors would be required. That is for the simple reason, as we feared, that practically all the advantage we would get out of it would be showing jurisdictional amount and the amount is so large that if we showed two or three hundred per annum we would certainly have a jurisdictional amount.

(Witness excused.)

(The court then, at 12:00 o'clock noon, Saturday, February 17, 1940, recessed until 9:00 o'clock a. m., Monday, February 19, 1940, at which time the following proceedings were had:)

{fol. 179]

MONDAY, FEBRUARY 19, 1940

Morning Session, 9:00 A. M.

#### PRELIMINARY DISCUSSION

Judge Sibley: Over the week end I have had an opportunity to read the pleadings and various papers in this case, and I find in the order of the Commission there is a provision that whereby in any particular case, and that was the word they used, case, the railroad company desired to pull a car without compliance with the order, that they would come to the Commission and get its special consent. Well, I had the thought that maybe these seventeen runs

ought to go to the Commission as special cases to have their judgment on whether or not they ought to be permitted, being in peculiar circumstances, not to have to comply, but findings five and eight of the order seem to indicate that the Commission had, to some extent at least, considered these seventeen runs, and I notice the pleadings of the Commission do not anywhere suggest that the matter is open and that the railroads and Pullman Company ought to come to them for special consideration of these cases, and the inquiry I want to make is whether or not you all are agreed about that, whether this is a closed chapter as to each of these seventeen runs, or whether it is a matter that is still open and that the Commission would have the power and duty to consider especially.

Mr. Graves: I assume that your Honor wishes to hear from the Commission first in answer to that question?

Judge Sibley: Well, you attack the whole order broadside, you said they didn't have any right to make any [fol. 180] order at all.

Mr. Graves: Yes, sir, that is correct. I think that I may as well say to the court that we considered that feature in the order, naturally, before we filed this complaint, and as we view it that is simply another and additional arbitrary feature in the order. All of these porter in charge lines were considered by the Commission at the hearing, and at the hearing they knew precisely what porter in charge lines there were in the State of Texas. The only two that have been added to the complaint, and that the Commission did not consider, are the two that have been inaugurated since the hearing was had, and attached to the complaint by way of amendment and addendum.

Judge Sibley: I mentioned that for the reason that Federal Courts have a great reluctance toward interfering with state operations until they get right to the last ditch. For instance, even in tax cases they require you to exhaust your administrative remedy before you come into the Federal Court with constitutional questions. There must be a last ditch fight in the state set-up, and whether that has happened or not is what was troubling me.

Mr. Graves: Yes, sir, we gave consideration to that and that is the thing that impelled us, when they first issued this order without notice or hearing, to go to the

Commission and ask for a hearing with respect to all of these runs.

Judge Sibley: They were separately presented to the Commission?

Mr. Graves: Yes, sir, every one except the two that have been inaugurated since the hearing.

[fol. 181] Judge Sibley: You say about one or two of these runs, that they don't involve anything but interstate passengers. Was all of that before the Commission?

Mr. Graves: Yes, sir.

Judge McMillan: Did they make any order?

Mr. Graves: No, sir. Exhibit F is a new order they made after the hearing, and it contains the broad, sweeping, prohibitory provision in the exact language of the original order they entered without notice or hearing.

Judge Sibley: And then added this opportunity to come back to the Commission? Is that a single charter car or something?

Mr. Graves: I don't know, Your Honor. I think I ought to say that in no event has the Commission authority under the Texas Constitution or the Texas statutes to promulgate a general sweeping order that amounts to a legislative order, and then say without announcing any standard that if we see fit to do so we may see fit to grant you relief from some particular operation. We think that is nothing but an additional arbitrary feature attached to the order. Now, if they had promulgated some standard that would enable us to apply the standard to a given run and come to them if that run, as we see it, happens to fall within the standard that would entitle us to an exemption from the order, that would be a different question, but we have had two hearings before the Commission with respect to all of these matters, and we thought it would be idle to have any more.

[fol. 182] Judge Sibley: I will tell you what we did in a case in Florida in which it was uncertain whether the administrative authorities had shot their bolt or hadn't, we retained an injunction for thirty days, I think, in order to give them opportunity to make the application or take the action that would bring the matter to a focus, and we let the bill pend until—I believe in that case it was some Federal decision—they could come to some conclusion as to what they

were going to do, and the bill was left pending as a safeguard.

Mr. Gravés: These are all of the porter in charge operations in the State of Texas, and we would still be here with this very bill.

Judge Sibley: Well, if they mean business, if they have considered this thing and made their decision there isn't any reason to go over it again. I was just asking if they had done that.

Mr. Graves: Yes, sir, they have considered all of them except the two runs inaugurated since then.

Judge Sibley: Judge McMillan wants to put it to you pretty pointedly. He wants to ask you straight off the bat that as representatives of the Commission whether the Commission regards these matters as open or whether they regard them settled?

Mr. Lewis: If the Court please, about the only way we can answer that is in this way, that looking at this order and considering it in the light of the testimony that was given [fol. 183] before the Commission, which we have read, it doesn't seem to me that the order is necessarily intended to preclude each and every line of operation in the State of Texas. Now, in inspection of the testimony that was given before the Commission perhaps shows in a general way consideration of each of these lines of the railroads and the Pullman cars. Nevertheless, I think a fair reading of the whole testimony before the Commission simply shows that the question open for consideration there was the general authority of the Commission to enter an order of this kind having a general application, and it seems to me that a savings clause was meant to take care of specific situations where a line which objected to this character of order could go in there and develop the evidence that pertained to that particular line. And the evidence that was before the Commission was somewhat of a general nature which bore on the authority of the Commission to enter that sort of an order. Now, this order, of course the immediate effect of it would apply only to the lines in Texas which are operated without Pullman conductors, but manifestly it would apply to the many, many other lines—

Judge Sibley: It applies to every Pullman car running in Texas? Wouldn't it be just a breach of those running without conductors?

Mr. Lewis: Yes, sir. And to say that the Commission in the previous hearing had up for consideration the individual lines and each and every individual line in Texas would be going a long ways. I don't see how it could be said, from an inspection of the record, that consideration was given to each and all of these operations. I think each one would have its own facts to sit on.

[fol. 184] Judge Sibley: Now, in finding five they say there are seventeen lines run at present without a conductor, and that the passengers on them pay the same amount and don't get the same service, and they find that there is a discrimination there. That looks like they passed on it.

Mr. Lewis: Yes, Your Honor, that paragraph does all right.

Mr. Graves: In connection with the question that the Court has raised, I will ask counsel if he has a copy of the transcript, the official transcript of the record before the Commission?

Mr. Rotsch: Yes, sir, we have it.

Mr. Graves: We would like to offer in evidence this transcript, if the Court please.

Judge Sibley: That is a whole lot of evidence. Is there any result coming from that? Of course, we ought to test what they did by what they ordered.

Mr. Graves: That has been our contention, your Honor.

Judge Sibley: You all don't agree about it. We are killing time. Go ahead with the evidence.

R. H. VROMAN, was recalled as a witness for plaintiffs, and previously having been duly sworn, testified further as follows:

[fol. 185] Direct examination.

Questions by Mr. Graves:

Q. Mr. Vroman, directing your attention to the matter that the Commission made a special finding on, its special finding No. 13, appearing on page 65 of the complaint, I will ask you to state what special training a conductor receives from the Pullman Company that is not received by the porters in charge?

A. None that I know of. The porters receive the same instructions that a conductor does when he is required to operate in charge.

Mr. Morgan: If the Court please, may we inquire of counsel if this examination of this witness is limited as it was on Saturday to jurisdictional facts, or is he now going into the case on the merits?

Mr. Graves: We hadn't intended to be limited to jurisdictional questions. We intended to go into the merits.

Judge Allred: Will the reporter read the last question and answer?

Thereupon the Reporter read the question and answer as follows:

"Q. Mr. Vroman, directing your attention to the matter that the Commission made a special finding on, its special finding No. 13, appearing on page 65 of the complaint, I will ask you to state what special training a conductor receives from the Pullman Company that is not received by the porters in charge?

A. None that I know of. The porters receive the same instructions that a conductor does when he is required to operate in charge."

[fol. 186] Q. What books of instructions or bulletins are issued to the conductors that are not issued to the porters in charge?

A. None whatever. They receive the same book of instructions, and these quarterly service and safety meetings are held and the same information is passed out to the porters as to the conductors. The same instruction is covered.

Q. What schools does the company have for conductors that are not also held for porters in charge?

A. None. We hold quarterly service meetings for the benefit of conductors and porters both for the purpose of acquainting them with any new features and for reviewing regulations that have already been issued from time to time.

Q. When a new conductor is employed by the company how long does he attend instructions schools or how long does he spend in an apprenticeship capacity?

A. Usually ten days and he is given instructions by someone that is familiar with our requirements in regard to the forms that are used, making up the diagrams and going over the forms in general, and then he is allowed to make

a road trip with an experienced conductor and permitted to lift the transportation and get instructions that way from actual contact. The same applies to the porters. They are given the same instructions in regard to diagram work and that sort of thing.

Q. What service is rendered by the Pullman conductor to the Pullman passengers on the train that is different from the service that is rendered by the porter when the [fol. 187] conductor is not on the train?

A. We feel that the passenger receives the same service on a car in charge of a porter that he receives when a conductor is present provided the porter lifts the transportation, and he looks after the passenger in every respect as the passenger receives on a conductor train.

Q. I was going to bring that out, but that isn't exactly what the question called for. The question I am now asking you is what is it that the porter has to do when he becomes a porter in charge in his contact with the passengers that he has not theretofore been required to do as a porter?

A. Merely lift the passengers' transportation.

Q. What additional service does he render to the company now as distinguished from that that he renders to the passenger?

A. He is required when operating in charge to lift the transportation, prepare the diagram, and, if it is necessary, to send space messages down the line just the same as the conductor would, and write up the diagram.

Q. As a matter of fact, as to all of these porter in charge runs in Texas, does the porter lift the transportation?

A. Not always. At some points where the trains leave late at night the transportation might be lifted by a conductor in the depot who receives for other cars at the same time, but in the daytime where the transportation is not lifted in the depot the porter handles it. I might add that on some trains the train conductor lifts both railroad and [fol. 188] Pullman transportation and turns the transportation over to the porter as the ticket lift is made. There is no hard and fast rule about that. Some train conductors require porters to do it and sometimes they lift it and turn it over to the porter.

Q. You spoke of the service meetings held for the conductors and for the porters. Are those meetings joint or are they separate? That is, do the porters and conductors attend jointly a common meeting?

A. In most districts they are separate, but in smaller points joint meetings are held. Not invariably, because some of the small points are separate, but a good many of them hold joint meetings.

Q. How many Pullman lines are there in Texas at the present time?

A. Lines locally in Texas and entering Texas, I think there are 114.

Q. What do you mean by a Pullman line?

A. Well, a Pullman line, it is all of our operations. That is a car movement from one point to another. They are identified by a line number, simply a distinguishing mark. To quote an example, I refer to this Fort Worth-Houston line in which the porter operates in charge from Fort Worth to Ennis. That is known as line 3128. It means a round trip operation of a car from one terminal to another. We have some trains that have several cars bearing the same line number, but usually a line number means one round [fol. 189] trip operation.

Q. Well, take the Texas Special for example on the Katy, or the Sunshine Special on the Missouri-Pacific, each of which trains carries a number of Pullman cars?

A. Yes, sir.

Q. Does each car have a different line number?

A. No, they don't. On the Sunshine there are two cars and that is line 3301, the line that runs to Mexico City. It is the same type of car, the same destination, and it is given the same line number. In that case we consider that a two car line, but usually each car has a separate line number.

Q. Well, how many Pullman cars are involved in the Texas operations, in these 114 lines how many Pullman cars are you using in service in Texas, in and through Texas?

A. Well, I am not sure as to that. You mean Pullman lines?

Q. Yes, sir, I mean Pullman lines.

A. 114.

Q. No, I mean how many Pullman cars do you use to operate those lines?

A. 400. That is the number of cars required to fill these so-called Texas lines.

Q. How many porter in charge lines are in Texas now?

A. Sixteen.

Q. How many cars are in operation in the porter in charge lines in Texas?

A. I think forty, but I can't recall that.

[fol. 190] Q. Well, is that approximately correct?

A. I think it is.

Q. You stated that it would require seventeen and a third additional conductors to supply the sixteen porter in charge operations if the company had to comply with this order?

A. That is correct.

Q. Is that the way that you would do it if the order has to be complied with?

A. Yes, sir.

Q. Could you arrange it so that you could do it any more economically than that?

A. No, sir. As a matter of fact, we might go beyond that. Some of these operations would not be very desirable operations, and we might go beyond that, but that is the minimum.

Q. Now, something is said in the order about the training that a conductor has in respect to the air conditioning on the cars as distinguished from that that a porter has. State what the facts are in that regard.

A. They have the same instructions. The conductors and porters, in regard to air conditioning. That feature is covered at the service meetings the same as other features, and the porters and conductors receive the same instructions. I think it is pretty generally considered that the porters know more about it than the conductors do. They have had the handling of it. I am not trying to discredit the conductors, but that is common gossip.

[fol. 191] Q. Is this, Mr. Vroman, a copy of the Pullman Company's instructions to conductors?

A. Yes, sir, this is a copy of the most recent instructions.

Q. Is that substantially the same copy as the one that was introduced in evidence at the Commission's hearing?

A. Yes, sir, it is.

Q. Now, have you a book of instructions there for the porters?

A. That is included in this book.

Q. The same book?

A. Yes, sir.

Mr. Graves: We offer that in evidence.

(The above referred to document was thereupon received in evidence, the same being marked Plaintiff's Exhibit No. 1.)

Q. The order states that the Pullman porter is not qualified to discipline a passenger on the train. I will ask you to state whether or not the Pullman conductor has authority to discipline a passenger?

A. He has not. The conductor and the porter have the same right in respect to disciplining passengers. If it is some minor infraction each is expected to handle it, but if it is something serious they must both report the matter and apply to the railroad conductor.

Q. Do each have authority to eject a passenger from a train?

A. No.

Q. If, in the opinion of the porter or conductor, a passenger conducts himself so that there is a call for disciplinary action, what is the duty of either of them?

A. They must go to the train conductor.

Q. Do you know, as a matter of fact, who handles the air conditioning on the train in the majority of cases?

A. The porter. It must be that way because on the larger trains that have eight or ten cars the conductor couldn't attend to the adjustment or regulation of it. He doesn't try to. He doesn't have time. If there is a car that is too cold or too hot he must exercise some supervision over the matter, but if he thinks it needs changing he is to notify the porter, and I suppose in ninety-five cases out of a hundred the porter regulates it entirely.

Q. You mean by regulating, you mean adjusting?

A. Yes, sir, adjusting the control levers.

Q. So as to reduce or raise the temperature?

A. That is right. We have a different temperature for night setting and a day temperature and all of those things. They have to regulate it when they are going through tunnels and other things.

(At this time a short recess was taken, at the conclusion of which the following proceedings were had:)

Judge Sibley: You may proceed, Mr. Graves.

Q. Mr. Vroman, approximately how many Pullman cars are on the average in operation by the company, all told?

A. Well, I think it is about 4500.

Q. What is the approximate number of employees of the company?

A. In the neighborhood of 25,000.

Q. So that on the average the operation of the cars requires about six employees to the car?

[fol. 193] A. Yes, sir, that is the way it works out.

Mr. Graves: That is all now.

Cross-examination.

Questions by Mr. Morgan:

Q. Mr. Vroman, you have separate schools for the porters and conductors, don't you?

A. At some points.

Q. Well in Texas. My remarks will be confined to Texas, please.

A. No, I think joint meetings were held in San Antonio and El Paso.

Q. Well, now, do you know that?

A. Yes, I know that.

Q. You know that they have joint meetings in San Antonio?

A. Yes, sir.

Q. With whom, now?

A. I beg your pardon.

Q. With whom—between the conductors and the porters?

A. Yes, sir.

Q. Have you ever personally attended any of the schools in Texas?

A. No, sir, I never have.

Q. What you are testifying is from your reports, then?

A. From the records, yes, sir.

Q. Yes, sir. Now, then, you know that we have a law that does not allow the colored people to ride in the same [fol. 194] section of the train with white people?

A. Yes, sir.

Q. And you know that in the Pullman cars only white passengers are allowed to ride there, and do ride there?

A. No, I don't know that.

Q. You don't know that, Mr. Vroman? Well, do you haul in Texas in the Pullman cars colored people?

A. Sometimes.

Q. Under what conditions?

A. If they have a room.

Q. Sir?

A. If they have a drawing room.

Q. Well, you don't allow them to ride out in the Pullman cars with the other passengers, do you?

A. I think there is a law that prohibits that in Texas, yes, sir.

Q. Well, actually, they don't do that, do they?

A. I don't know, Mr. Morgan.

Q. All right. Now, Mr. Vroman, you have Pullman cars that accompany the Missouri Pacific trains from San Antonio to Austin, don't you?

A. Yes, sir.

Q. And those are in charge of a Pullman conductor?

A. Some of them are; I think they all are.

Q. And you have Pullman cars that accompany the Katy trains?

A. Yes, sir.

Q. From San Antonio to Austin?

[fol. 195] A. Yes, sir.

Q. And those are in charge of a Pullman porter?

A. One of them is.

Q. You pass through the same localities, don't you?

A. Pretty much.

Q. The same communities?

A. Pretty much.

Q. In fact, you use the same tracks for a part of the distance, don't you?

A. I believe so.

Q. Now, then, in one instance you furnish a Pullman porter and a Pullman conductor, and in the other instance you furnish only a Pullman porter, is that correct?

A. That is right.

Q. Now, those passengers who ride on those various trains, in one instance will have a Pullman porter and the other will have a conductor and a porter?

A. That is correct.

Q. You never run a train—when you have a conductor on it you never run a train without the porter, do you?

A. No, I never do.

Q. All right. Now, then, from San Antonio to Fort Worth that same condition exists, doesn't it?

A. Yes, sir.

Q. That I have just outlined?

A. Yes, sir.

Q. And from Houston, don't you have some runs out of Houston, where the same condition exists?

A. Yes, sir.

[fol. 196] Q. Don't you have, in fact, on the Southern Pacific out of Houston—you have that condition, don't you?

A. Well, I don't know just what condition you are referring to.

Q. I mean by that the point I referred to just a minute ago, that you have some trains that originate at the same point and go to the same destination on which the passengers who ride on those Pullman cars are accompanied by a Pullman conductor, and then on other trains which originate at the same point and go to the same destination they are accompanied only by negro porters in charge.

Mr. Graves: Just a moment. I do not care to have the testimony excluded, but I think we should object to it in order that our position may be consistent, may it please the Court. There is no statute in Texas, no rule—no law of any kind that requires the Railroads or the Pullman Company to maintain identical services on different trains. It is a matter of common knowledge—

Judge Sibley: No; the evidence goes in. You say it doesn't make any difference because there is no law to make any difference.

Mr. Graves: That is right.

Judge Sibley: All right, go ahead.

Q. Now, Mr. Vroman, on those two trains that we have outlined the same fare is charged, isn't it?

A. You mean the railroad fare or Pullman fare?

[fol. 197] Q. Well, we will take first railroad fare.

A. I am not—

Q. Between the point of origin and the destination, do you not know that the same railroad fare is charged—

A. I think it is.

Q. —between two given points?

A. I think it is.

Q. Whether you ride the Missouri Pacific or whether you ride the Katy, the same charge is made?

A. I think so, yes.

Q. All right. Then, for the privilege of riding in the Pullman car the Railroad Company does charge an extra fare, you know that, don't you?

A. Yes, sir.

Q. That is one cent a mile, isn't it, in Texas?

A. I believe it is.

Q. Then in addition to paying that extra railroad fare to ride in the Pullman car, the Pullman Company then charges an additional fare?

A. They charge for their accommodations.

Q. Well, that is an additional charge, though, in addition to the railroad fare, and then the extra fare to ride in the Pullman?

A. It is an additional expense to the passengers. You can't go to the theater without paying for it, and if you ride in a Pullman car you must pay for a seat or berth; that applies on both roads and on all roads.

[fol. 198] Q. I understand and your charges are identical in every instance, whether there is a Pullman porter in charge or whether there is a Pullman conductor in charge?

A. That is right.

Q. All right; and the same—the same charges are made whether there are 10 Pullman cars or one Pullman car?

A. That is right.

Q. I believe you testified Saturday, did you not, that in your opinion, the Pullman conductor, I mean the Pullman porters—just a minute before I go into that; I want to ask you this question: now, are the porters in charge, the porters, are they given any different or special instructions as distinguished from the regular porters?

A. Absolutely.

Q. You have different schools for them?

A. Well, they are given special instructions or in charge work just the same as the conductors would receive; whereas the ordinary porter does not—is not given that sort of instruction. We have some porters that are not qualified to operate in charge; but those that are are given instructions in that line of work.

Q. Now, your counsel has introduced in evidence here this book of instructions which says "Instructions to Conductors". Now, the first paragraph that I see here says, "Conductors have jurisdiction over and are responsible for the proper performance of duties of all car service [fol. 199] employees on cars under their charge."

A. That is right.

Q. "It is their duty to receive passengers, assign accommodations and make collections therefor, supervise the

service closely". Now, what service do they supervise; just what does that phrase mean "supervise closely"?

A. I think the term "supervise" explains that pretty generally. Supervision means that he is in charge, the same as one person has supervision over any group of employees working under him.

Q. Now, those working under him would be the porters, is that correct?

A. Yes, sir.

Q. Who else?

A. Well, some trains have maids and some have barbers, depending on the makeup of the train.

Q. All right. Reading further: "and enforce observance by subordinate car employees of regulations of the company",—is that the duty of the conductors to do that,—"especially those looking to the comfort of passengers"?

A. Yes, sir.

Q. Now, last Saturday I believe you testified that in your opinion the Pullman porters were better qualified to take care of the situation where there were people drinking or failing to observe proper decorum on the train, than was a Pullman conductor?

A. I don't think I said that. I said that I thought that a Pullman porter is better able to handle a drunk passenger. [fol. 200] I didn't say general decorum. There might be a fight between two passengers that probably the conductor would be better; but to wait on intoxicated people, I think the porter is better able to handle the situation.

Q. Well, you testified before the Commission when we had a hearing in Austin, didn't you?

A. Yes, sir.

Q. Do you recall your testimony in that case where you said that—reading from page 109, "Q. I am talking about drinking, whether liquor is sold or not, I don't know about that. I know it is not sold in Texas. A. Yes, there is a lot of drinking. Q. Where there is drinking do you think a white man will allow a negro porter to correct him and tell him what to do? A. I would suppose he wouldn't want anybody to tell him what to do. Q. You know, do you not, that a white man in Texas is not going to allow a negro to give him orders, and that he would come nearer to allowing a white conductor to instruct him? A. I presume that is true."

A. Well, I still contend that neither a porter nor a conductor has got any license to discipline a passenger. If a porter can persuade a passenger to do something by reasoning with him, I don't call that discipline; that is simply using a little tact. I have not changed my mind about that.

Q. Well, you just changed your testimony, is that all?

A. No, I haven't changed my mind.

Mr. Morgan: I think that is all.

[fol. 201] Judge Sibley: I would like to ask just for information, what the Texas Commission does about Pullman charges. Do they fix them intra-State?

The Witness: No, sir.

Judge Sibley: You fix them?

The Witness: Yes, sir, the Interstate Commission—

Judge Sibley: The Interstate Commission has no function there, has it?

The Witness: Yes, sir, the Interstate Commerce Commission—our rates are determined by the Interstate Commerce Commission. I am not an expert on rates, Judge, but I know that the Texas Commission does not fix them.

Judge Sibley: Any of them?

The Witness: No, sir, we have a rate man here that can explain that.

Judge Sibley: All right.

Judge McMillan: This order makes some collateral regulations with regard to rates. What do they predicate that on?

Mr. Graves: I assume that they predicate it on their rate making authority. There is a provision in this order that they shall not charge for riding—charge passengers for riding in the porter in charge cars where the Railroads receive any part of the Pullman fares.

Mr. Pollard: If the Court please, in 1906 the Texas Com-[fol. 202] mission undertook to fix the rates of upper berths in Pullman cars—

Judge McMillan: Did the Circuit Court of Appeals hold they couldn't do that?

Mr. Pollard: The District Court for the Northern District of Texas held that the Commission had no authority over the Pullman Company; that was in 1906 and 1907. There has no law been passed since.

Judge Sibley: I did not want to divert the case. I simply asked for information.

Mr. Graves: Yes, sir.

Judge Sibley: Go ahead with the examination.

Redirect examination.

Questions by Mr. Graves:

Q. Mr. Vroman, on the long trains where you have two or more Pullman cars, how many conductors—Pullman conductors do you have?

A. One. We have no train that—I don't think we have a train—I think there is one train out of New York that operates two conductors, on account of the large number of cars—12 or 14 cars; but ordinarily one Pullman conductor is provided for all trains.

Q. And you have some long trains that go through the State of Texas that have several Pullman cars on them, don't you?

A. Yes, sir.

Q. And regardless of the number of cars on those trains you have only one conductor?

A. That is correct.

Q. You mentioned barbers and maids. Do some of the [fol. 203] trains also carry attendants in charge of the lounge car?

A. Yes, sir.

Q. Where those attendants are Pullman Company employees, does the Pullman conductor on the train have general supervision over them?

A. They come under the supervision of the conductor, the same as the porters.

Mr. Graves: That is all we have.

Recross-examination.

Questions by Mr. Morgan:

Q. You don't have any barbers and maids on the Pullman trains in Texas, do you?

A. No, sir.

Mr. Graves: Well, do you know?

A. I think there are barbers on the Sunset Limited, but they are not Pullman employees.

Mr. Morgan: That is all.

(Witness excused.)

Judge Sibley: Call your next witness.  
Mr. Graves: Mr. Bradish.

L. M. BRADISH, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is L. M. Bradish?

A. Yes, sir, it is.

[fol. 204] Q. What is your official connection with the Pullman Company?

A. I am Assistant Comptroller.

Q. You live in Chicago?

A. Yes, I do.

Q. Your office is in Chicago?

A. It is, yes, sir.

Q. You have to do with the Accounting Department?

A. Yes, sir.

Q. First, I want to ask you, Mr. Bradish—well, how long have you been in the service of the Pullman Company?

A. Since 1892.

Q. You testified at the Railroad Commission hearing on August 31st, did you not?

A. Yes, I did.

Q. Have you computed the expense that would devolve upon the Pullman Company in the way of additional salaries—conductors salaries, as a consequence of compliance with the order that is now in dispute, the Railroad Commission order?

A. Yes, I have.

Q. What would be the cost of the Pullman Company?

A. \$25,600 per annum.

Mr. Lewis: If the Court please, we desire to object to that question and answer and move that the answer be stricken, for the reason that it calls for a pure conclusion, and it has not been shown by what method he arrived at that figure.

[fol. 205] Judge Sibley: Well, as to the first objection, I overrule it. As to the second, I think that is a matter of cross examination; you can ask him about that.

Q. Now, what was the figure you gave, Mr. Bradish?

A. \$25,600 a year.

Q. Is that the net cost or is that the gross expense to which the company would be subjected?

A. That is the gross expense, that is the expense to which the Pullman Company—

Mr. Morgan: If Your Honor please, we further should like to object on the ground that the mere fact that this order if put into effect would cause some expense is no criterion to determine whether or not it is unconstitutional.

Judge Sibley: It is no final criterion but I think it is an element to be considered.

Judge McMillan: It would go to show the jurisdictional amount, too, wouldn't it?

Mr. Morgan: I assumed, Your Honor, the jurisdiction had already been established. We further call the Court's attention to the fact that this order does not require anything of the Pullman Company. It is directed only to the Railroads.

Judge Sibley: Well, they are partners, you know; both are deeply interested in the case.

Q. Mr. Bradish, I still want to know whether that figure is the--whether that is the total amount of salaries that would be paid to the additional conductors that Mr. Vroman [fol. 206] said the company would have to have.

A. That is correct; that \$25,600 would be the additional pay to the conductors that we would have to pay—the Pullman Company.

Q. Well, under your contracts with the Pullman conductors?

A. Yes, under the contracts—

Judge Sibley: What about the saving on the salaries of the porters in charge?

The Witness: That is the net.

Judge Sibley: That is the Net?

The Witness: That is the net, \$25,600.

Q. That is what I am trying to find out,—what is the gross amount of salary, approximately?

A. \$41,200, I believe it was.

Q. All right. Now, when you subtract the amount that you now have to pay if you had no porter in charge operations—

A. Yes, sir.

Q. —that would reduce it to what?

A. In total, that would make it \$36,100, in total.

Q. All right. Now, then what happens as to the difference between the \$25,000 and the \$30,000—how do you account for that?

A. That the Railroad Company would have to have a certain difference of \$10,000.

Q. Under the contracts?

A. Under the contracts.

Q. Between the Pullman Company and the Railroads operating under contracts?

A. Yes, sir.

[fol. 207] Q. Operating the Pullman cars under contracts?

A. Yes, sir, that is right.

Q. I will ask you to state, Mr. Bradish, whether these are copies of the contracts between the Pullman Company and the Railroads operating these porter in charge trains in Texas? (Counsel hands several documents to witness).

A. Yes, they are.

Q. You are familiar with those contracts?

A. Yes, I am.

Q. These are correct copies of them?

A. Yes.

Q. These are the current contracts, the contracts that are now in force?

A. Yes.

Mr. Graves: We offer them in evidence, may it please the Court.

(Thereupon the contracts above referred to were marked as Plaintiff's Exhibits Nos. 2 to 14, inclusive.)

Q. Now, the contracts that were in effect at the time the hearing was held by the Commission last August were introduced in evidence at that time, were they not?

A. They were submitted and they took extracts from the contracts; they were not filed.

Q. Well, Mr. Morgan called on the Pullman Company to furnish copies of the contracts, did he not?

A. Yes, he did; he did.

Q. You furnished them, did you not?

[fol. 208] A. Yes, he had them.

Q. Yes.

A. He had them.

Q. Now, then, these are the same contracts, except as to the contracts that have been entered into since that date?

A. That is correct.

Q. And you have substituted the new contracts where there have been changes?

A. The new contracts are there, yes, sir.

Q. In other words, the contracts between the Pullman Company and the Railroads which had expired under their terms in the interval have been substituted by new contracts?

A. There have new contracts been issued. I think the old contracts, possibly, is not that contract.

Mr. Culbertson: We make the objection, if Your Honors please, that as to the new contracts made since that time, that we do not know exactly what the terms of the new contracts are, whether they vary the terms of the old contracts, and so far as they do, we object to the introduction; and we make a further objection to these contracts that the parties rights having expired under the contracts at the time of the hearing and these contracts having been made since the order went into effect; that they cannot be heard to object in this case, coming in here under contracts made after the order was entered into.

Judge Sibley: Well, this is a legislative order and it works like the law. Whether it is unconstitutional now seems to be the question and the contracts now, it seems to [fol. 209] me would be the very point, if they have any effect at all. I think the present contracts should be in.

Q. I believe in this group of contracts that you have identified in the two instances where there are new contracts that have been entered into since the Commission hearing, the copies of the old contracts are here also.

A. Well, they are, the old ones and the new ones.

Mr. Graves: So we offer in evidence, for the purpose of comparison, the old contracts as well as the new ones.

Q. Mr. Bradish, do you know whether the compensation that the porter will receive under the Railroad Retirement Act after they have retired will be influenced by the salary that they receive while they are in active service?

A. Yes, they will be affected.

Q. Well, will they—

A. That is, their pension depends upon their earnings; if they get less earnings they get less pension, and if they get more they get more.

Mr. Graves: That is all.

Cross-examination.

Questions by Mr. Morgan:

Q. Mr. Bradish, all these contracts, do they not have one point in common, namely, that the Pullman Company is guaranteed a certain definite return before the Railroad shall share in them?

A. No, sir.

[fol. 210] Q. Sir?

A. It does not provide for any return; some of them provide that the Pullman Company's expenses will either be taken out of earnings, or in the event the earnings are less than the expenses, then in some instances the Railroads will make up the difference between the two.

Q. That is true. In other words—

A. But they do not guarantee any return.

Q. The Pullman Company is to receive a fixed amount, let's see, of \$8,000 or \$7,500 per year per car, what you call operating expenses?

A. Yes.

Q. Isn't that true?

A. They will if the cars earn it. Some of them provide that the—as I say, the Railroads will make up the difference; but other contracts don't provide for that.

Q. Well, now, can you cite the ones that do not so provide?

A. All the contracts?

Q. Yes, sir.

A. I can give you some that do not. The T. & P. do not—

Q. The T. & P.?

A. That is one.

Q. Well, what is your arrangement with the T. & P.?

A. That contract provides that the revenue in excess of \$9,000 per car per annum will be divided as between the Pullman Company and the Railway Company, 50 per cent each.

Q. In other words, the first \$9,000 that the car earns will go to the Pullman Company?

A. If they earn it.

[fol. 211] Q. Yes, sir; and then the earnings, if any, over and above that amount, will be divided equally between the T. & P. and the Pullman Company?

A. Any earnings above \$9,000, that is correct.

Q. Now, isn't that same general plan, varying in amounts as to the gross, isn't that same general plan provided in each of your contracts?

A. No, most of the contracts provide that we will recover use of the gross earnings first for our expenses.

Q. Yes, sir.

A. Second, we will get an initial return of \$1,000 per car per annum, and then all above that will be divided equally between the two interests.

Q. Well, now do I understand you to say that it provides, first, that you shall be guaranteed your expenses?

A. You didn't let me quite finish.

Q. I mean your operating expenses; I mean the money that comes in, you are first to get your operating expenses if that amount is made, is that correct?

A. Yes, if it is we will get it.

Q. And then the first thousand dollars over and above that you are to get that?

A. That is right.

Q. And then the earnings above those two items, if any, are to be divided between the Railroads and the Pullman Company?

A. That is correct; that is correct.

Q. Therefore, if this order is put into effect, the additional charges, if any, that are charged against the operation [fol. 212] of the cars, will under these contracts, be taken into consideration, and they will be an additional expense that comes under the first item that the Pullman Company—

A. Yes, it goes in to increase the expenses.

Q. Therefore, before you participate in the second item, namely, a thousand dollars, or before the Railroads participate in the third item, the earnings over and above the first two, this additional expense, if any, would have to be paid?

A. Yes, yes.

Q. And that would be taken care of, then if the first initial operating expenses, along with the other expenses?

A. It would go in with the other expenses.

Q. Yes, sir. Now, then, this per car—these Pullman cars that operate in Texas operate under the entire system; you don't limit any one car to a specific locality do you, Mr. Bradish?

A. Cars are usually assigned to lines, but, as you say, they would be taken off of its line and run in other lines.

Q. And when you are including the expense of each car, then the profits, if any, over and above the expenses, you figure that on the entire system, don't you, of a railroad?

A. Of a railroad, yes, the entire system of cars.

Q. In other words, your contracts with the Missouri Pacific are not limited to earnings made in Texas, or any other State, but are taken of the entire system of the Missouri Pacific lines?

A. That is right.

[fol. 213] Q. Well, that same thing is true of all other railroads, isn't it?

A. Yes.

Q. And this expense item, if this order goes into effect, and you say it would cost you so much money, that likewise would be spread all over the entire system of a railroad, wouldn't it?

A. Yes, it would.

Q. And would not be limited, of course, to any one State?

A. No.

Q. Now, Mr. Bradish, according to your calculations, do I understand you to say that the total cost to all the Railroads in Texas, if this order is put into effect, would be \$10,500—is that your statement?

A. I don't think so.

Q. Sir?

A. I don't think so.

Q. Well, what did you say about that?

A. I said the expenses to the Railroad Companies would be \$10,500. That would be an expense to the Atlantic Coast Line, if you please.

Q. Sir?

A. Part of that would be an expense to the Atlantic Coast Line; they would have to stand part of that; every Railroad in the United States would bear part of that.

Q. Every Railroad in the United States?

A. Yes, sir.

Q. It would not be limited, then, just to the Texas roads, [fol. 214] is that right?

A. That is correct.

Mr. Morgan: That is all.

Redirect examination.

Questions by Mr. Graves:

Q. Mr. Bradish, have you made some calculations to determine what Railroads in the State of Texas did share in the expense and to what extent?

A. Yes, I have.

Q. How many of the Railroads that are parties to this suit would share in the expense?

A. There is five of them that would have to bear part of the expense.

Q. Can you tell us who they are, and approximately what it is?

A. The Kansas City Southern is small; it would be around about—

Mr. Culbertson: Now—

A. The Kansas City Southern—

Mr. Culbertson: Excuse me, if Your Honor please, we want to object to the witness expressing an opinion as to how much each Railroad would have to bear, because that would be a matter for the Railroads themselves, taking into consideration their own accounting problems, to determine as between the cost of operations and the gross receipts taken over their entire lines, and then considered in respect [fol. 215] to their entire lines in Texas; in other words, my objection goes to this point, that unless this witness is qualified to give the gross receipts of, say, the Missouri Pacific of all the passenger traffic over its lines in Texas, the total receipts from that traffic, and the part of these expenses which are allocated to that traffic, why then, he is not competent to testify how much of this charge would go to that Railroad Company.

Judge Sibley: It doesn't seem to me that it is fortifying the constitutional part of the order for us to know what they did with the expenses in their account; and it looks

like to me that if the expense dropped on somebody it shall fall on everybody, and the initial instance would be the thing we are concerned with; but how much of it they passed on to one another we wouldn't be concerned with. That is the way it strikes me.

Mr. Culbertson: I don't know whether I made myself clear, and I don't want to be a bore to the Court, but United States Supreme Court, as we understand it, has held that in order to determine whether a rate or a charge under an order is unreasonable or confiscatory, it is not enough just to show some expenses and show how much it would cost—

Judge Sibley: Well, there is no claim of confiscation here that I have heard. There is none in the pleadings; they just claim you are being an unreasonable burden on them.

[fol. 216] Mr. Culbertson: Yes, sir, the same Railroad that I am contending for, Your Honor, in order that I might get my objection into the records, is that in order to determine the reasonableness of a rate it is not sufficient to say that it costs so much to operate a particular line, but the ratio of the cost to the entire receipts of the particular line from a particular kind of traffic must be determined for the purpose of finding out how much it is going to cost.

Judge Sibley: Well, somebody has got to pay it. If it is unreasonable it doesn't seem to me to matter who has to pay it, and if it is unreasonable the Court wouldn't care who pays it if it is unreasonable; somebody has got to pay it. I don't see any use in wasting time as to the trickles that this cost takes among the Railroads. I would never get to the end of that, personally, in my own mind. We will leave out the accounting methods between the Railroads whereby they shift and participate in their own troubles.

Mr. Graves: We do not demur to the Court's ruling; the only thing we would want to call attention to the fact that counsel has misconceived the effect of these contracts, and I am sure that if he studies the contracts, he will find that he has made an incorrect statement as to how this expense is allocated.

Judge Sibley: Well, the contracts are in evidence. If either side can make anything of them, why, they are here.

Q. What is the average expense per car for operating the Pullman cars?

[fol. 217] A: About \$9700 per car.

Q. Per annum?

A. Per annum, per annum.

Judge Sibley: That is where you take conductors into account, of course.

The Witness: Everything, your Honor; all expenses.

Q. Well, included in that average, have you included the porter in charge operations?

A. Yes, that cost is in there.

Q. In other words, that is the general average per car of the Pullman Company's costs of operating the cars over the country?

A. That is right.

Judge McMillan: Is that each individual car that costs \$9700, or are you speaking of cars as a unit?

The Witness: That is the average, Your Honor; that is what we call an actual service—that is, that is on the car that is moving.

Judge McMillan: When the car is in service.

The Witness: That is the margin, that is all.

Judge Graves: That is all, Mr. Bradish.

(Witness excused.)

[fol. 218] Mr. Graves: We will have Mr. T. C. Olney.

T. C. OLNEY, a witness for plaintiff, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is T. C. Olney?

A. That is right.

Q. What is your position with the Pullman Company?

A. District Superintendent at New Orleans.

Q. How long have you been with the Pullman Company?

A. Well, let's see, this is the 42nd year.

Q. How long have you been working for the Company at New Orleans?

A. Nearly 25 years.

Q. Nearly 25 years?

A. Yes, sir.

Q. Have you been in the capacity of District Superintendent during all of that time?

A. Yes, sir.

Q. Do you have under your immediate supervision all of the porters and all of the—all of the Pullman porters and all of the Pullman conductors that operate out of New Orleans?

A. I do.

Q. Approximately how many?

A. Well, right now we have, I think 275 porters and 32 conductors.

Q. By the way, are those porters—are they Northern men or are they Southern men?

A. I think every one is a Southern man, I can't think [fol. 219] of any that is not.

Q. Do you have any porter in charge operations under your supervision out of New Orleans?

A. Yes, we operate right now 48 porters in charge.

Q. Out of how many lines, operated?

A. Nine lines.

Q. How is that?

A. Nine lines.

Q. Nine lines?

A. Yes, sir.

Q. How many lines, all told, operate out of New Orleans, in your District?

A. I think it is 48 now.

Q. Forty-eight, and nine of them are porter in charge lines?

A. Of course, some of them are just for a portion of the trip, you understand.

Q. Yes. Well, if a porter is in charge during any part of a trip you characterize that as a porter in charge line?

A. Yes, because his full time is carried as porter in charge.

Q. How long, Mr. Olney, have you had operations known as porter in charge operations in the New Orleans District?

A. Well, almost the entire time that I have been there; I would say about 24 years.

Q. About 24 years.

A. Twenty-three or 24 years, perhaps longer than that; I am not sure.

Q. How many complaints during that time have you had of mistreatment by the porters in charge of women passengers?

Mr. Morgan: If your Honor please, we submit that that [fol. 220] is not material, as to what happened down in

New Orleans. We are not investigating the entire system. We submit that it is not admissible.

Judge Sibley: Is this Texas territory in your District?

The Witness: I have many lines; I probably operate 150 porters through Texas.

Judge Sibley: Well, I don't know that that is any reason for not hearing it. Of course, the South has a peculiar problem as a whole. I don't think it is any different in Texas from what it is in the South as a whole. It seems to me that this general experience over the entire territory would be of some help.

Mr. Graves: I think possibly, Your Honor misunderstood him also. I think he said he had many lines in Texas under his supervision.

Judge Sibley: Yes, sir, and some are not under his supervision.

Mr. Graves: That is right.

Judge Sibley: I think his experience in the New Orleans territory would be fairly illustrative of what might be experienced in Texas. That is what I am trying to say.

Mr. Graves: We would further say that this order condemns these men because they are negroes and not because they are Texas men.

Judge Sibley: Well, it may appear that way, but that is not the language of the order, I don't suppose.

Mr. Morgan: No, Your Honor, we submit there is no [fol. 221] provision such as that contained in the order.

Judge Sibley: Yes, you are correct about that. The order does not say anything of the kind.

Mr. Morgan: Note our exception to the ruling of the Court, on the other question; not on this, but on my original objection.

Mr. Graves: Well, will Your Honor indulge me long enough to read just a sentence from the order?

Judge Sibley: All right. After all, the construction of the order on this couldn't affect the examination of this witness, could it?

Mr. Graves: No, sir, but we didn't make a full statement of our case at the beginning here.

Judge Sibley: I understand that perfectly. All of the porters are colored men. That has been testified to.

Mr. Graves: That is right.

Judge Sibley: I don't know that it is fair to say it does so and so on that basis.

Mr. Graves: All right. May it please the Court, section 16 of the findings made a part of the order and on which the order rests, findings of the Commission, are as follows:

"The Commission further finds from the evidence that the porters on Pullman cars are negro men. The Commission further finds that if negro men porters are placed in charge of the Pullman cars when the service of a conductor is dispensed with, that there is imminent danger of insults to the lady passengers on the Pullman cars, and that such condition exists in the 17 operations by the Pullman Company where they do not use conductors, as hereinabove [fol. 222] referred to, and that the same constitutes an abuse and an undue and unjust disadvantage and discrimination."

Judge Sibley: You want to prove the untruth of those findings?

Mr. Graves: Yes.

Judge Sibley: And I ruled that you could do it in the New Orleans territory.

Mr. Graves: Yes.

Judge Sibley: What are we fussing about?

Mr. Graves: We have no complaint at all, Your Honor.

Judge Sibley: Go ahead.

By Mr. Graves:

Q. I don't believe you answered the question.

A. No, I never have—I can't recall, and have no record of ever having received a complaint of that kind because of a porter in charge.

Q. Mistreatment of women passengers on a car where you had a porter in charge?

A. Nor any other complaint because of a porter being in charge.

Q. How long have you been District Superintendent, Mr. Olney?

A. Since 1908. That would be 32 years.

Q. Did you act in that capacity at any other southern place, places in the south?

A. Chattanooga and I was assistant at Louisville, Kentucky.

Q. How long were you at Chattanooga?

A. From 1908 to 1915, that would be 7 years.

[fol. 223] Q. This Line No. 3010, the operation from New Orleans to Oakland, California, that is under your jurisdiction. That is the porter operation?

A. Yes, sir.

Q. The porters that operate on that line originate at New Orleans? That is, do they work out of New Orleans, or out of California?

A. Out of New Orleans.

Q. Those porters on that car that leaves New Orleans on that—what is the name of the train?

A. Gulf Coast Lines, a subsidiary of the Missouri Pacific Lines.

Q. Those porters that travel on that train come from New Orleans to Oakland, California, and return?

A. They do.

Q. Who hires the porters in your district?

A. I do.

Q. What investigation do you make for the purpose of determining whether a porter is a satisfactory man before you hire him?

A. We investigate all employees for at least five years back, and we endeavor to personally interview every employer, not by mail, but personally interview them.

Q. You personally interview all of the persons who have employed the applicant for the job?

A. Yes, sir.

Q. For a period of five years?

[fol. 224] A. Yes, sir, and we cover every month, try to cover every month of that five year period.

Q. What else do you do?

A. Well, sir, of course, we size them up as to apparent character and appearance and personality. That has an importance, but naturally the employers for the five years will give us most of the information that we need.

Q. After they are employed what steps are taken by the District Superintendent looking to the supervision of the men?

A. Well, we make these inspection trips. I will say in my district there are four of us who make a weekly trip, and that—we go out very often and get off a train in the middle of the night and come back and catch them without their knowing we are out on the line.

Q. The District Superintendent travels on the train some, too?

A. I make at least a trip a week, and my assistant does, and we have two commissary agents who make a trip a week, each.

Q. You have traveling inspectors who do nothing else?

A. Yes, our traveling inspectors, not assigned especially to this district, but they ride the line that way, and inspect it from the eastern zone, ride the line to the east from New Orleans.

Q. And they supervise the work of the Pullman porters and conductors?

A. Absolutely, the same supervision for both.

[fol. 225] Q. What different character of instruction, if any, do you give the conductors from the nature of instructions that you give the porters?

A. Well, they are the same for the conductors, and men who operate in charge, operate with the conductors. They have the same rules, same rule book, and same instructions as to clerical work and handling of their reports, also as to handling the passengers in all respects.

Q. The porter in charge receives the same instructions from the company periodically and all of the time that the conductors do?

A. Exactly.

Q. Mr. Olney, who determines primarily whether a given Pullman line shall be a porter in charge line or shall be a conductor in charge line?

A. Well, I would, in New Orleans.

Q. The lines operating out of New Orleans—

A. I would recommend according to the character of the line and whether it should be a conductor or should be a porter. That would be for the lines that I operate.

Q. What qualifications are taken into account in making that recommendation? What actuates you in making the recommendation?

A. Well, I will have to say frankly if there is only one car on the train, I would always recommend a porter in charge because my experience has been that not only is the in charge work handled as well, but then both work is done better by a man who runs in charge than a man who doesn't [fol. 226] run in charge. He feels his responsibility.

Q. They have to make certain reports to the Pullman Company, something in the nature of paper work, diagrams and so forth. I will ask you to state how the reports of

that kind made by the porters in charge compare with the reports made by the conductors?

A. Well, just as good, as far as I know. Of course, there are some porters that are better than others, and some conductors better than others in their handling of reports, but I will say that very few diagrams come back from the auditor on account of a clerical mistake on account of the porter in charge.

Q. Now, you have meetings attended by the conductors, and then you have meetings attended by the porters; is that right?

A. That is right.

Q. At those meetings do the porters in charge receive any different instructions from what the conductors do?

A. No, they do not.

Q. Do they receive the same instructions?

A. Identical instructions.

Q. Do you conduct those meetings, or how are they conducted?

A. I conduct them, and others take part in the meetings, certain features.

Q. What steps does the company take to see that the Pullman cars, when they start on the trip at New Orleans, and at district points, are in charge of proper service employees?

A. The same they would for a conductor line. They are [fol. 227] inspected by the platform man; the men are inspected to see if they are in good condition.

Q. Take this train you have referred to as an illustration, the car that runs from New Orleans to Oakland. When the car leaves New Orleans on its regular run, and before it leaves, does the Pullman Company have anybody at the station or at the train to inspect these men that go out on that train?

A. Absolutely. Every train is sent out by a representative of the company, usually a platform man, or myself, or an assistant.

Q. That is all, gentlemen.

Cross-examination.

Questions by Mr. Morgan:

Q. Mr. Olney, if there should be any irregularities on the part of the Pullman porter while he is in charge, who would report that? Would he?

A. The train conductor, I presume. He is in charge of the train.

Q. I understand, but has that ever happened?

A. I can't remember a single case.

Q. All right. Now, when you are taking into consideration whether you shall have porters in charge, or conductors in charge, isn't the cost item of what it will cost the company, isn't that one of the things that you take into consideration?

A. Well, naturally, I am interested in the expense, but the service is a major consideration, always has been, always [fol. 228] will be.

Q. Mr. Olney, hasn't it in recent years been the practice of your company to take off conductors more and more and put more and more porters in charge?

A. I can't say it has at New Orleans.

Q. I believe the testimony here Saturday—I don't know whether you were here or not, was to the effect that in Texas alone there were some four or five conductors taken off in 1939, in Texas, and within the last two or three years there were some six or seven, or practically half of the operations in Texas where there is no conductor, is a result of a change that has been made within the last two or three years. Does that same condition prevail now?

A. Well, only—if there was any change it would be because business is less, and they have taken the other cars off the line and there was only one car on the train.

Q. That tendency is increasing, isn't it?

A. Not at New Orleans.

Q. Sir?

A. I have just about as many men in charge as I did twenty years ago, and no more.

Q. I think that is all.

Mr. Graves: That is all.

(Witness excused.)

[fol. 229] Judge Allred: Go ahead, Judge.

Mr. Graves: Is the Court going to take any recess this morning?

Judge Sibley: We took one. Do you want another?

Mr. Graves: No, but the order of what we were planning to do might depend on that.

Judge Sibley: If you desire to have a recess taken we would be glad to take it.

Mr. Graves: I wish you would give us five minutes.

Judge Sibley: We will take a five minute recess.

(Thereupon Court was recessed from 10:45 A. M., until 10:55 A. M.)

Mr. Graves: May it please the Court, we have some disinterested witnesses here, citizens, and out of logical order, we would like to put them on the stand to accommodate them.

Judge Sibley: All right.

Mr. Graves: There are four of them here at the present time, and would the Court like to have them all sworn at once, to save time?

Judge Sibley: Yes, sir.

Mr. Graves: I will ask Mr. Caldwell, Mr. Mitchell and Mr. Fisk and Mr. Marsh to stand up and be sworn.

[fol. 230] Judge Sibley: Please sit right there at hand. Take seats so that you can come to the witness stand promptly. Who is the first?

Mr. Graves: Mr. Caldwell is first.

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THOMAS J. CALDWELL, a witness produced by the Plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is Thomas J. Caldwell.

A. Yes, sir.

Q. You live in Houston.

A. Yes, sir.

Q. What is your business, Mr. Caldwell?

A. Banking.

Q. Well, you are Vice President of the—

A. Union—

Q. —Union National Bank of Houston?

A. That is right.

Q. You were born in Austin, were you not, Mr. Caldwell?

A. Yes, sir.

Q. Did you live in New Orleans for a while?

A. About four years.

Q. Connected with the bank there?

A. Yes, sir.

Q. How long have you been connected with the Union National Bank as Vice President?

[fol. 231] A. About 13 or 14 years.

Q. Mr. Caldwell, in recent years have you had occasion to travel on the train frequently or infrequently?

A. Rather frequently.

Q. Has your traveling been confined to the State of Texas, or have you traveled generally over the country?

A. Practically all over the United States.

Q. Practically all over the United States. In your travels, have you traveled any on trains where the Pullman car was in charge of a Pullman porter, and where the train was not accompanied by a Pullman conductor?

A. Upon some occasions, yes.

Q. Do you happen to recall any particular train of that character that you have traveled on?

A. Well, I think that coming back from Seattle to Houston last October I was on a car that the negro porter was in charge of. I have occasion frequently to go to San Angelo, and until recently the Pullman from San Angelo went to Dallas and I would go to Brownwood and get on the Houston Pullman there, and I think that car to Brownwood from San Angelo was in charge of a negro.

Q. This trip you made from the west coast to Houston, do you recall whether that was over the Santa Fe?

A. Yes, that was on the Santa Fe. I took the Santa Fe at San Francisco.

Q. Did you come through Clovis and Sweetwater?

[fol. 232] A. Yes, sir.

Q. Mr. Caldwell what is your—what has been your impression of the quality of the service rendered by the porters in charge of these cars as compared with the service rendered to Pullman passengers on the trains where a conductor was present?

A. I think it is quite as good in every respect that I have been able to notice.

Q. I will ask you to state whether you would have any hesitancy about entrusting any members of your family, the ladies, or your wife, or your daughters, to the care of one of these Pullman porters?

A. I have never thought of such a thing. I wouldn't have the slightest hesitation, as far as I am able to feel now.

Q. Have you observed any more disorder on these trains, or on these cars where the porter was in charge than you have observed on any other trains?

A. No, sir.

Q. As a matter of fact—

Judge McMillan: Please speak out so that the stenographer can get your answer.

A. No.

By Mr. Graves:

Q. As a matter of fact, how much disorder have you observed on the trains? How much drunkenness and carousing?

A. Very, very little. It is remarkable how little I have observed on the Pullman cars.

Q. That is all.

[fol. 233] Cross-examination.

By Mr. Lewis:

Q. Mr. Caldwell, do you have—have you had any difficulty with the porter being able to calculate the amount of your passage?

A. Well, I don't know that that question has ever arisen with me.

Q. Where do you buy your tickets?

A. I always buy my ticket before I get on the train.

Q. Do you ride on a pass or not?

A. No, sir.

Judge McMillan: Answer out so that I can hear, and so that the Reporter can hear.

A. No, sir.

By Mr. Lewis:

Q. Does your bank carry railroad accounts?

A. Yes.

Q. You say you would have no hesitancy in entrusting your wife and daughters on one of these Pullman cars, that is, attended only by a Pullman porter, in the event there

were boisterousness or drunkenness on that car, wouldn't you prefer to have a Pullman conductor there?

A. I wouldn't say so. It never occurred to me to hesitate on that account.

Q. With drunkenness on there, and some man trying to be boisterous, wouldn't you be better satisfied with your wife on there if the car were in charge of a Pullman conductor? [fol. 234] A. I don't think so. I think she would be perfectly safe under any circumstances. That would be my feeling.

Q. That is all.

Mr. Graves: That is all, Mr. Caldwell, thank you very much.

(Witness excused.)

HOMER R. MITCHELL, a witness in said cause produced by the Plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is Homer R. Mitchell?

A. Yes, sir.

Q. You live in Dallas?

A. Yes, sir.

Q. How long have you lived in Dallas?

A. 36 years.

Q. You are in the insurance business.

A. Yes, sir.

Q. You admit you are a lawyer also, do you?

A. Yes, sir.

Q. Mr. Mitchell, have you had occasion in recent years to travel frequently on the trains in Texas?

A. Yes, sir.

Q. Have you traveled on a train where the Pullman car [fol 235] was in charge of a porter, and where there was no Pullman conductor on the train?

A. Yes, sir, I have.

Q. Have you noticed any difference in the service rendered to the Pullman passengers on those cars from the service rendered where a Pullman conductor was present?

A. None at all.

Q. Do you know any of those porters that operate regularly on these trains in Texas?

A. Oh, by sight, yes, and a few of them by their—some sort of name.

Q. By their familiar name?

A. By their familiar name, yes, sir.

Q. Referring to that type of porter, I will ask you to state whether you would be willing to entrust the female members of your family in their care on a train on a trip as a Pullman passenger where the train had no Pullman conductor on it?

A. I would. I would have no hesitation about it.

Q. Have you ever noticed any trouble on the trains where there was a porter in charge of the Pullman car?

A. I can't recall any.

Q. That is all, gentlemen.

#### Cross-examination.

##### Questions by Mr. Lewis:

Q. Mr. Mitchell, you say you are in the insurance business?

A. Yes, sir.

[fol. 236] Q. Now, are you carrying either the insurance for the Pullman Company or the railroads?

A. No, sir.

Q. Not interested in that insurance?

A. No, sir.

Q. This—what about the cleanliness of these cars? Have you noticed any difference between those attended by a Pullman porter acting in both capacities from those that are also supervised by a conductor?

A. No, sir, I have no recollection of having noticed any.

Q. Have you noticed the condition of the cars in either event?

A. I think in a very general way I have noticed, of course, but I bear no recollection of the distinction in the two.

Q. Have you ever noticed any of the cars out of good condition, in the way of cleanliness?

A. I don't recall having seen one, except on the regular rounds, they will come around, a slight necessity for their mopping up, but that was temporary and being attended to.

Q. In the event of boisterousness or drunkenness on the Pullman car would you prefer that a Pullman conductor be there with the porter or not?

A. I can't believe that I would have any reason one way or the other. I am unable to say definitely that I would prefer it one way or the other. I think at least anything that I could anticipate would be about as well handled one [fol. 237] way as the other.

Q. Are you able to say how many times during the past year you have ridden a Pullman car which did not have a conductor in charge?

A. Well, I travel, of course, a good deal, between here and Dallas, and it is probably in charge—probably left in charge of a porter, and going back in the afternoons, that is frequently without a conductor, a number of times, and I sometimes make frequent trips, and then it would be infrequent for a period of time, but ten or a dozen trips a year.

Q. You always get your ticket before you get on the car?

A. Yes, I think I have always done so.

Q. That is all. Wait just one second. Would you send your little granddaughter in a Pullman car with only a Pullman porter in charge?

A. I think so.

Q. Over a long trip?

A. Yes, sir.

Q. That is all.

Mr. Graves: That is all. Thank you.

(Witness excused.)

[fol. 238] CHARLES A. FISK, a witness produced by the Plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

Questions by Judge Graves:

Q. Please state your name, Mr. Fisk.

A. Charles A. Fisk.

Q. Where do you live?

A. Amarillo.

Q. How long have you lived in Amarillo?

A. About 35 years.

Q. What is your business, Mr. Fisk?

A. Banking.

Q. Vice President—

A. Vice President of the First National Bank.

Q. Vice President of the First National Bank of Amarillo. Have you had occasion to travel frequently on trains in recent years?

A. Yes, sir.

Q. Do you remember whether you have traveled any of the trains where the Pullman car was in charge of a Pullman conductor—I mean—a Pullman porter, and no Pullman conductor on that train.

A. Yes, sir.

Q. You have been a Pullman passenger under those circumstances?

A. Yes, sir.

Q. Have you noticed any difference in the service that is [fol. 239] rendered to the passengers on that type of train from that that is rendered to passengers on a train where a Pullman conductor is present?

A. No, sir.

Q. Mr. Fisk, would you have any hesitancy about placing female members of your family on a Pullman car of that kind in charge of a Pullman porter?

A. No, sir.

Q. Where there is no Pullman conductor on the train?

A. No, sir.

Q. Have you ever observed any mistreatment of passengers on that kind of a train?

A. No, sir.

Q. That is all.

#### Cross-examination.

##### Questions by Mr. Lewis:

Q. Have you ever observed any attempts at misconduct between any of the passengers on any of those cars?

A. No, sir.

Q. Have you ever observed any misconduct on the part of a passenger on any such cars, just individual passengers?

A. No, sir.

Q. Disturbing the peace, or getting drunk, anything of that nature?

A. No, sir, I haven't.

Q. In the event of any such disturbance or misconduct, do you think that a negro porter could do just as good a job [fol. 240] of straightening it out as a Pullman conductor?

A. I believe so, in my opinion, yes.

Q. You think he could? That is all.

Mr. Graves: That is all. Thank you, Mr. Fisk.

(Witness excused.)

STANLEY MARSH, JR., a witness produced by the Plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. You live in Amarillo?

A. Yes, sir.

Q. Your name is Stanley Marsh, Jr.?

A. Yes, sir.

Q. What is your business?

A. I am in the gas production business.

Q. Have you had occasion to travel on the trains frequently in recent years?

A. I judge that I travel about once a month, on the average, on the trains.

Q. Have you traveled on trains where the Pullman car was in charge of a porter, and where there was no Pullman conductor on the train?

A. Yes, sir.

Q. As a Pullman passenger?

[fol. 241] A. Yes, sir.

Q. Have you noticed any difference in the service rendered to the Pullman passengers on that type of train from the service on the trains where the Pullman conductor was present?

A. In many cases I didn't even know whether there was a conductor there. I didn't distinguish any difference in the service.

Q. Have you seen any mistreatment of passengers, either by passengers or by the Pullman porter on such occasions?

A. No, sir.

Q. That is all.

Cross-examination.

Questions by Mr. Lewis:

Q. Mr. Marsh, how long have you lived in Amarillo?

A. 13 years.

Q. You say in most instances you hadn't noticed the difference?

A. No, sir.

Q. What caused you to observe the fact that there were not conductors in some instances?

A. I had simply heard that certain trains were porter in charge of trains, and I have noticed it after I heard it.

Q. Who told you about that?

A. In distinguishing between where there are conductors and where there are not, I have asked some of the lawyers connected with this case where those cases exist, to refresh my memory, on where those runs were.

[fol. 242] Q. And do you have any independent recollection of any of the different runs prior to the time these gentlemen spoke to you about it?

A. I do on the run from Amarillo to Oklahoma City, on the Rock Island.

Q. What caused you to remember the difference?

A. I simply remembered back that there was no conductor. That is the way I would like to explain it.

Q. What caused you to notice it?

A. At that time I didn't notice the difference. I now remember it.

Q. Did you inquire for a conductor?

A. No, sir.

Q. Did you ever inquire for one?

A. No, sir.

Q. Where do you get your passage, before you get on the train?

A. Yes, sir.

Q. Always?

A. Yes, sir.

Q. Did you ever notice any disturbance on the train?

A. Up in Oklahoma I saw one drunken man, is all I remember.

Q. Did you ever notice any attempt at misconduct on the part of passengers in the sleeping cars?

A. No, sir.

Q. You never have seen them?

A. No, sir.

[fol. 243] Q. You think that the porter could do as good a job of straightening that out, if there were any misconduct, as a conductor?

A. I will admit that if there were bad misconduct, I would rather there were ten people —

Judge McMillan: Rather there were what?

A. Ten people there to straighten it out, if my family were on the train.

Q. If there were just some misconduct, you would rather it would be a white man?

A. No; as a practical matter, I believe the porter can handle it.

Q. That is all.

Redirect examination.

Questions by Mr. Graves:

Q. He asked you whether you got your passage before you got on the train. You don't travel on passes. You mean you got your ticket?

A. My ticket.

Q. That is all, thank you very much.

(Witness excused.)

[fol. 244] L. M. SHEPARDSON, a witness for the plaintiffs, having been previously duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Please state your name.

A. L. M. Shepardson.

Q. You live at Waco?

A. Yes, sir.

Q. How long have you lived at Waco?

A. Thirteen years.

Q. What is your business?

A. I am traffic manager of the Waco Chamber of Commerce.

Q. Have you had occasion to travel frequently on the trains as a Pullman passenger in recent years?

A. Many, many times every year.

Q. Have you traveled frequently on Pullman cars that were in charge of a Pullman porter, where no Pullman conductor was present in charge of the car?

A. Yes, sir, many times.

Q. Have you noticed any difference in the service rendered to the passengers on those trains as compared with one where the Pullman conductor is present?

A. None whatever.

Q. Would you have any hesitancy whatever in allowing your female members of your family to ride on Pullman cars in charge of porters?

[fol. 245] A. No, sir, they do it many times, and if I may be permitted to elaborate, when my wife or any of the female relatives are traveling to and from, I nearly always call upon the porter to see that they get special attention, and it is nearly always rendered.

Q. Have you ever noticed any disturbances or mistreatment of passengers on the Pullman cars where they were in charge of porters?

A. No, sir. I have traveled for a great many years, and I have never seen a passenger mistreated yet.

#### Cross-examination.

##### Questions by Mr. Lewis:

Q. Does the presence of the train conductor on that train have any bearing on the way you feel about it?

A. The presence of the train conductor?

Q. Yes, sir.

A. The train conductor is in charge of the train, and naturally if there should be any disturbance the porter could call on him, but I have never found any occasion for anything of that kind to happen.

Q. Does that have any bearing on the way you feel about the question?

A. No, not particularly. This question seems to be as to whether the passenger is safe with a Pullman porter, as safe with a Pullman porter as he is with a Pullman conductor, and I say he is. That has been my observation.

Q. You have never noticed any disturbances on any of the trains?

[fol. 246] A. Nothing that would be outstanding at all, no. Nothing that I can lay my finger on particularly.

Q. Do you remember any instance where a man had to correct a passenger?

A. No, I don't believe I do. I don't believe I have noticed any case of that kind. I have noticed instances, if you want

to elaborate, where Pullman conductors have got very officious and have gone beyond their duties, and I have never seen that on the part of a Pullman porter.

Q. How many times have you noticed that?

A. Well, I know of one particular instance that affected me that way. That was some time ago.

Q. You are just a little "agin' them, is that it?

A. No, sir, not in the least. I have occasion to charter trains two or three times nearly every year, with both Pullman porters and Pullman conductors on them. I have a great many friends all over the United States among the Pullman porters and Pullman conductors. Several in the audience:

(Witness excused.)

A. G. BOLDRIDGE, a witness for the plaintiffs, was sworn and testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is A. G. Boldridge?

A. Yes, sir.

[fol. 247] Q. Are you employed by the Pullman Company?

A. Yes.

Q. In what capacity?

A. Agent at Shreveport right now.

Q. How long have you been in the employ of the Pullman Company?

A. Slightly over seventeen years.

Q. Have you ever worked for the Pullman Company in Texas?

A. Yes, sir, most of my time has been in Texas, practically all of it.

Q. In what capacity?

A. Up until December 11th when I moved to Shreveport I was in Texas altogether. I have been conductor, day agent, night agent, agent at Galveston, conductor again, and service inspector. Now agent at Galveston.

Q. Now agent at Shreveport, you mean?

A. I mean Shreveport. Pardon me.

Q. How long have you served as inspector in Texas?

A. Almost three years.

Q. That was work that required you to travel with the trains constantly?

A. Yes, practically all the time.

Q. What was the purpose of the traveling that you did?

A. To inspect all of the cars and employees en route, supervision in general at outlying points.

Q. Well, did you—were you required as a traveling inspector to make reports?

A. Yes.

[fol. 248] Q. To the company?

A. Yes.

Q. Did the reports cover the work of the conductors as well as the work of the porters?

A. Yes, it covered it all.

Q. I will ask you to state how the service was, as you found it, rendered by the porters in charge, compared with the service as you found it rendered by the Pullman conductors?

A. Well, in practically every case I found that the cars were in tip-top condition where the porters were in charge, and a good many cases where the cars were not in good condition with conductors.

Q. Well, in general would you say that there is any difference between the complaints that you had to make as between the two kinds of service?

A. I don't believe I have had to make any complaints on porters operating in charge at all during nearly three years.

Q. Now, when you travel on these trains, when you traveled on these trains did the porter in charge or the conductor, as the case happened to be, have any warning that you were going to travel on that particular train?

A. Sometimes they do. They have a way of signaling sometimes. I always tried to make a point to get on the trains where they wouldn't have that information.

Q. Where they wouldn't have that information?

A. Yes.

Q. You didn't give them any such warning then?

[fol. 249] A. No.

Q. Among other things, is it your duty to determine whether either the conductor or the porter has been drinking while on duty?

A. Yes, sir, absolutely.

Q. Do you endeavor to detect liquor on his breath? In other words, do you endeavor to find out whether he was drinking before you got on the train?

A. Yes.

Q. Have you had occasion to make reports against porters in charge for that offense?

A. No.

Q. Have you also had occasion to inspect different runs for the purpose of making recommendations as to whether the run would be made a porter in charge run or conductor run?

A. Sometimes, yes.

Q. When you were operating as an inspector in Texas under what superintendents did you work?

A. The zone superintendent, whose office is in Houston.

Q. And who was the district superintendent?

A. Mr. W. H. Irwin.

Q. During the time that you were one of the traveling inspectors in Texas do you know how many inspectors the company had traveling the trains in the Texas territory?

A. Two including myself.

Q. Two including yourself?

A. And I understand there was one out of St. Louis came [fol. 250] down once in awhile.

Q. Now, that was in addition to the traveling that is done by the district superintendents and their assistants?

A. Yes.

Q. By the way, Mr. Boldridge, are you a Southern man?

A. Yes, sir, I was born in Lancaster, South Carolina.

(Witness excused.)

W. H. IRWIN, a witness for the plaintiffs, was sworn and testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is W. H. Irwin?

A. Yes, sir.

Q. What is your position with the Pullman Company?

A. District superintendent of the Pullman Company at Houston, Texas.

Q. How long have you been in the employ of the Pullman Company?

A. Twenty-eight years.

Q. How long as district superintendent?

A. A year.

Q. You have been at Houston a year?

A. I have been in Houston twenty years, but I was in Houston as chief clerk, second assistant superintendent and assistant superintendent, first assistant superintendent and district superintendent.

Q. You succeeded Mr. Cease there?

[fol. 251] A. I was made a district superintendent, but we have an assistant to the vice-president.

Q. I see.

A. That has charge of the Houston zone.

Q. Mr. Irwin, did you have any particular duties to perform in behalf of the Pullman Company in respect to the employment of Pullman porters, or rather applicants for the job of Pullman porters?

A. Yes, sir, I did all of the work of handling of applications and approving of the applications. That is, if we were going to take up any porters, the first thing we would bring the man in that was going to make the application and if he filled the bill he would make application. We would cover his time for the last five years, there wouldn't be any lapse for five years as to where he had worked, in addition to three references from three people whom he had worked for, and in addition to that I would go out and personally interview the men he worked for, as well as personal references, and after that I or the porter instructor would go out where this porter lived, this colored man lived, and check up his home surroundings and see whether or not he would be a suitable man for our service. And then after we had the application completed then, of course, the district superintendent would approve the application and send it to the zone superintendent for approval.

Q. Now, what other Pullman employees are engaged in the state of Texas riding the trains and supervising the [fol. 252] service other than the traveling inspectors, service inspectors and superintendents?

A. The district superintendent and the assistants.

Q. Does the Pullman Company have any other employees operating out of the district offices other than the porters and conductors? Do you have any yard men?

A. Yes, we have yard inspectors. We have a yard inspector assigned to the Houston zone.

Q. Do you have any safety men?

A. We have a safety supervisor also.

Q. Do you have any passenger travel men?

A. We have a passenger travel agent now assigned to the Houston zone.

Q. Now, do all those men occasionally ride the trains?

A. They are out on the road practically all of the time.

Q. Are they supervising the service while they are on the trains?

A. Yes, sir, and they make reports just like a service inspector would, if they found anything wrong.

Q. If any complaints are made from any source of the conduct or the dereliction of duty on the part of the porter in charge in your district would the complaints come under your notice?

A. Yes.

Q. Would they come to your office?

A. They would come to my office, yes, sir.

Q. I will ask you to state how many complaints you have [fol. 253] had of that nature?

A. I don't recall any, any serious complaints. Of course, there might be some service complaint, the porter may have failed to explain the operation of the lower berth ventilation to a passenger, but as far as any serious complaints, I don't know of any.

Q. Speaking particularly with reference to porters in charge.

A. Porters in charge, yes, sir.

Q. Do you ever attend any of these meetings, instruction meetings or schools, as you call it?

A. I conduct the schools in the Houston district. I conduct the schools. We have quarterly service and safety meetings and the conductors, we usually start the conductors at 8:45 in the morning until about 10:00 a. m., and then the porters from about 10:30 to about 12:00 o'clock, and both the conductors and the porters receive the same instructions, and after the meetings are over we furnish each and every employee with a resume of just what has been covered in the service and safety meetings.

Q. Do the Pullman conductors get any instructions or schoolings that the porters in charge do not get?

A. No, sir.

## Cross-examination.

Questions by Mr. Morgan:

Q. Do you have any qualifications at all for Pullman conductors?

A. Yes, sir, the same qualifications. We would handle it the same way we handled the porter. We would check up [fol. 254] on his application the same.

Q. Do you have any book of instructions for porters in charge?

A. Porters in charge use the same book as the conductors.

Q. You don't have any special instructions for them, do you?

A. No special instructions, just the same instructions the conductors get.

Q. How long would it take a traveling inspector to cover all the lines? I believe you say you have about 400 cars in Texas. How long would it take to cover all of the lines in Texas, just on one trip?

A. Well, don't figure just the inspectors, because all of the district representatives and their assistants are out all the time, and all these lines are covered at least once a month by some member of the staff in the zone.

Q. All right, can you please answer my question, how long it would take for one man to cover it all?

Judge Sibley: Why should he answer it if one man doesn't cover it all?

Mr. Morgan: I understood, if the Court please, that he testified he had two inspectors in the state.

Judge Sibley: He says he has a staff, seven or eight or nine, as I recall it.

A. Yes, your Honor. We all, all the district superintendents, the superintendent, the safety supervisor and the yard inspector and everyone else are instructed when they go out on trains to inspect the service and make reports.

Q. Well, then, some member of that staff that you refer to, I believe you say, gets around at least once a month? [fol. 255]

A. Yes, sir.

Q. And that is about as often as you can cover it, isn't it?

A. Lots of times we have men out there. We cover it regularly, you understand. There are sometimes five or

six cars in one train, and a man can cover maybe twenty or thirty cars a day.

Redirect examination.

Questions by Mr. Graves:

Q. The service inspectors, do they travel the entire trip every time, or do they get on and get off?

A. They get on and get off, possibly they will ride a train maybe fifty miles and get off and get on another train, and they might cover eight or ten trains a day by making these jumps.

Q. Do they cover a number of trains at night also?

A. They are on the trains at day and night, and of course they get on at stations where the employees least suspect them to get on. We have them do that so we can find out just what the service is. Many times a man will get on at midnight or two o'clock in the morning and he might go to a meeting point of a train and get off and get on another train at two-thirty in the morning.

Q. Do you have an agent at the platform at the station in Houston every time a train goes out of the Houston station?

A. We have two men, one at the Union Station and one at the Southern Pacific, and they cover every train to see the employees are in first class shape and to see that the [fol. 256] cars are in first class shape, and also they cover every passing train, every train that passes. We don't permit any train to get out without an employee being there, myself or a platform representative or some member of my office seeing that train before it leaves, to see that it is in first class shape as to employees and equipment.

(Witness excused.)

F. B. VALET, a witness for the plaintiffs, was sworn and testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is F. B. Valet?

A. Yes, sir.

Q. You are district superintendent of the Pullman Company, stationed at Dallas?

A. Yes, sir.

Q. How long have you been with the Pullman Company?

A. I am in my thirtieth year.

Q. What different positions have you filled?

A. Well, I have filled the positions of clerk, stenographer, receiving cashier, ticket agent, agent and district superintendent.

Q. How long have you been district superintendent at Dallas?

A. Since last December.

Q. Do you hold service meetings at the Dallas office?

A. We do.

[fol. 257] Q. Are those meetings held jointly, that is, do the porters and conductors hold joint meetings or attend separate meetings?

A. I have held joint meetings, but I haven't held any in Dallas as yet. I have only been there two months.

Q. Have you had occasion to form an opinion as to the comparative service, quality of service rendered in general by the porters in charge to that of the service rendered by that of Pullman conductors?

A. I have found it to be equally satisfactory.

Q. Where were you stationed before you went to Dallas?

A. Shreveport.

Q. Shreveport?

A. Yes, sir.

Q. How long were you there?

A. Twenty years.

Q. Well, did any of these porter in charge lines that are involved in this suit operate through or out of Shreveport?

A. I think the Kansas City Southern was mentioned. That line operated out of Shreveport.

Q. The Kansas City Southern line from Shreveport to Kansas City is one of the lines involved here.

A. Yes, sir.

Q. That line did operate out of Shreveport, out of the Shreveport office?

A. Yes, sir.

Q. Did you ever have any complaints while you were there of the conduct or dereliction of duty on the part [fol. 258] of the porters in charge on that line?

A. Minor derelictions. Not particularly porters in charge. We have reports of minor derelictions of employees in the lines at different times.

Judge McMillan: You say that this service rendered by a porter in charge on one car is just as good as if he had a conductor?

A. I think so.

Judge McMillan: When does it become desirable to have a conductor?

A. Well, when you have several cars where each porter would have to look after his own car.

Q. Each porter can attend to his car just as well without a conductor as he can with one, and on a train made up of eight or nine cars each porter would attend to his own car?

A. Yes, sir. There are other things that enter into that.

Judge McMillan: What are they?

A. Assignment of space.

Judge McMillan: You mean shifting space between cars?

A. Yes, sir.

Judge McMillan: Anything else?

A. I can think of nothing else.

Q. Is it of any importance to the company that you have one man on the train that knows about the space on the entire train?

A. Well, where there are severals cars it would be.

Q. That is what I am talking about.

A. Yes.

[fol. 259] Q. As a rule on these longer trains made up of several Pullman cars is the traffic heavier?

A. It is.

#### Cross-examination.

Questions by Mr. Morgan:

Q. Would it be difficult for porters to interchange that information you have just spoken of?

A. Would it be difficult?

Q. Yes, sir. They are just there from one car to another, aren't they?

A. It probably would if there are a number of cars involved, the space would have to be transferred back and forth, the assignment rather.

(Witness excused.)

ALLEN HARVEY, a witness for the plaintiffs, having been previously duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. You are one of the parties to this suit, are you, Allen?

A. Yes, sir.

Q. Allen Harvey is your name?

A. Yes, sir.

Q. Where do you live?

[fol. 260] A. Fort Worth.

Q. How long have you lived at Fort Worth?

A. About thirty-seven years.

Q. Thirty-seven years?

A. Yes, sir.

Q. How long have you been working for the Pullman Company?

A. About thirty years.

Q. About thirty years?

A. Yes, sir.

Q. As porter all of that time?

A. Yes, sir, porter.

Q. Where were you born?

A. I was born in Colorado County, between Houston and San Antonio, on the main line of the Southern Pacific, Weimar.

Q. Weimar?

A. Yes, sir.

Q. You have lived in Texas practically all your life?

A. Yes, sir, all my life.

Q. Are you a married man?

A. Yes, sir.

Q. Have you got a family?

A. Yes, sir.

Q. What does your family consist of?

A. A wife and a daughter.

Q. Your wife and daughter?

A. Yes, sir.

Q. How much schooling have you had?

[fol. 261] A. I went through high school and about three years in college.

Q. About three years in college?

A. Yes, sir.

Q. What college?

A. Paul Quinn College, Waco.

Q. Is your daughter educated?

A. Yes, sir.

Q. Did she finish high school?

A. Yes, sir. She has her Master's.

Mr. Morgan: We submit that is not material.

Judge Sibley: Sustain the objection.

Q. Do you own your home?

A. Yes, sir.

Q. Is it paid for?

A. Yes, sir.

Q. Do you own any other property?

A. Yes, sir, I have a little more property.

Q. You have a little more property?

A. Yes, sir.

Q. Some rent houses?

A. Yes, sir.

Mr. Morgan: We object to that.

Judge Sibley: (He is answerable personally in damages if he does anything wrong. Cut that as short as you can. You can show he is a responsible man, I think.

Mr. Graves: Yes, sir.

Q. Allen, what line are you now operating on as porter?

[fol. 262] A. 3128.

Q. 3128?

A. Fort Worth—

Q. Where do you start and where do you end?

A. I start at Fort Worth to Ennis. I open my diagram, that is, start to open it on leaving Fort Worth as far as Ennis. I am in charge coming back. I close the diagram coming into Fort Worth.

Q. All right, now, that is on the Southern Pacific?

A. Yes, sir.

Q. A train leaving Fort Worth at night for Houston?

A. Yes, sir, 10:35.

Q. And it is a branch that runs out of Fort Worth and connects with the main line at Ennis?

A. Yes, sir.

Q. And that main line starts at Dallas?

A. Yes, sir.

Q. And there your car is hooked onto a train that has a Pullman conductor on it?

A. Yes, sir.

Q. What time does your train leave Fort Worth?

A. 10:35.

Q. What time do you leave Ennis?

A. Coming back?

Q. Going to Houston?

A. At 12:30.

Q. At 12:30?

A. Yes, sir.

[fol. 263] Q. Midnight?

A. Midnight, A. M., yes, sir.

Q. On an average, how many passengers do you haul on that car?

A. Well, just take on an average, it will average from five to six and sometimes not that many. Just say on an average, on an average about five or six.

Q. Are nearly all of them through passengers from Fort Worth to Houston?

A. Yes, sir, nearly all of them are through passengers. Very seldom do we have any shorts.

Q. How long have you been running on that line?

A. Oh, I have been over on the Southern Pacific about seven or eight years, on the Southern Pacific, in charge.

Q. Have you been in charge of that car all the time from Fort Worth to Ennis?

A. Yes, sir, all that time.

Q. Have you had any other porter in charge operations?

A. Oh, yes, sir.

Q. Tell us about some of them.

A. Well, I ran between Tulsa and Kansas City in charge.

Q. From Kansas City—

A. When they had the sur-charge on.

Q. When they had the sur-charge on?

A. Yes, sir. That was before they taken it off. I run between there.

Q. Between where?

A. Tulsa and Kansas City.

Q. Between Tulsa and Kansas City?

[fol. 264] A. Yes, sir, about 263 miles, I think it is.

Q. How long were you on that run?

A. Oh, I was there about, I think about a couple of years.

- Q. Are there any others?
- A. Well, on the Katy between Muskogee and Tulsa.
- Q. Muskogee and where?
- A. Tulsa.
- Q. Tulsa?
- A. Yes, sir, on the Katy.
- Q. Any others?
- A. Yes, sir, on the Frisco between Fort Worth and Tulsa.
- I had that line, too.
- Q. That was an in charge line?
- A. Yes, sir, that was in charge as far as Sherman.
- Q. Well, have you ever run on any other Texas lines in charge?
- A. No, sir.
- Q. Did you ever run out to Abilene?
- A. I ran out there about ten years. Of course, I handled all the transportation, but I didn't make a diagram at that time, but I handled it all just the same as in charge. I didn't get a conductor until 12:35 at night.
- Q. Going which way?
- A. Going east.
- Q. Going east?
- A. Yes, sir, going to Fort Worth.
- Q. That car operated from where?
- A. From Fort Worth to Abilene and set out.
- Q. Set out at Abilene?
- [fol. 265] A. Yes, sir.
- Q. What time did you get to Abilene?
- A. Got there at 3:20 in the morning.
- Q. Well, did it have a conductor on it from 3:20 until 8:00 o'clock in the morning?
- A. No, sir, the conductor went on to El Paso.
- Q. You were in charge of the car?
- A. Yes, sir.
- Q. From 3:20 in the morning?
- A. Until we discharged passengers at 7:30. You might say 7:30, because they had until 7:30 to occupy the car, you see.
- Q. How long did you say you ran on that line?
- A. About ten years on the T-P out west.
- Q. Are you pretty well acquainted with the Abilene People?
- A. Yes, sir, I was well acquainted with them.

Q. Allen, have you ever had a fight with a passenger on the train?

A. No, sir.

Q. Have you ever had any trouble of any kind?

A. No, sir, never had any trouble, no, sir.

Q. Have you ever had an experience with a drunk passengers on the train?

A. Well, I have seen them drinking, but I have never had no trouble, never did have no serious trouble, no, sir.

Q. Have you ever had an experience with a drunk passenger that you couldn't handle by yourself?

A. No, sir, I never did. I have always pacified them and [fol. 266] got them to bed or got them quiet some way or another, you know.

Q. Well, how do you go about handling that? Do you order them around?

A. Oh, no, sir, you couldn't do that, you know.

Q. What?

A. You couldn't do that and get no where with that, Judge, no, sir. You have to handle them with gloves. Even if you had a conductor he couldn't do that, just order them around, because it wouldn't go. You would sure have trouble then.

Q. Have you ever had any experience on the train where a drunk passenger insulted another passenger?

A. No, sir, I never have, no, sir.

Q. Either on the train where you were in charge of the Pullman car or where there was a conductor?

A. No, sir, neither one.

Q. What are your instructions from the Pullman Company if you have any—if a passenger on the train that was unruly whom you can't pacify, what are your instructions?

A. Well, my instructions are to go and get the train conductor.

Q. Get the train conductor?

A. Report it to the train conductor, yes, sir.

Q. What would you do?

A. Yes, sir, that is what I would do.

Q. The porter in charge runs have been one car operations, I take it, where you have been in charge?

A. Yes, sir, just one car.

Q. Just one car?

[fol. 267] A. Yes, sir.

Q. Do you get extra pay from the Pullman Company for being a porter in charge?

A. Yes, sir.

Q. How much?

A. \$13.50 a month.

Q. \$13.50 a month?

A. Yes, sir.

Q. What is your age?

A. My age is fifty-nine.

Q. You are fifty-nine years old?

A. Yes, sir.

Q. At what age will you be entitled to retire if you should want to retire?

A. Supposed to be sixty-five, thirty years in service.

Q. Have you ever had any trouble making change?

A. No, sir.

Q. For passengers on the train?

A. No, sir, I have never had no trouble.

Q. Have you ever had any trouble with your diagram?

A. No, sir. No, sir, I knock on wood. I never had one sent back to me; and you know if you make a mistake with the Pullman Company they will sure send it back.

Q. You never had a diagram to come back on you?

A. No, sir, I never had one to come back on me.

Q. If you make a mistake on it that is what would happen?

A. Yes, sir; oh, yes, sir, that is what would happen, if just a penny was involved you will get it back.

[fol. 268] Q. Are you a member of the church?

A. Yes, sir.

Q. What church do you belong to?

A. The Methodist.

Q. What church?

A. A. M. E. Methodist.

Q. At Fort Worth?

A. Yes, sir. I went to church yesterday morning here.

Q. You went to church here yesterday morning?

A. Yes, sir.

Q. Do you drink?

A. No, sir.

Q. Have you ever been guilty of being drunk on duty?

A. No, sir; no, sir, I have never had no trouble about that.

## Cross-examination.

Questions by Mr. Lewis:

Q. Allen, about how often are you troubled with people drinking on the cars?

A. Oh, I haven't had any trouble, just say drinking on the cars, I can't recall the day when I have had any. I haven't had no trouble at all. I have had them drinking, but no trouble, no, sir.

Q. What does it take to be trouble?

A. Well, somebody that is interfering or wants to fight or disturbing other passengers, that is what I would call trouble.

Q. How long has it been since you asked a man to be quiet [fol. 269] or to change his conduct in any way?

A. Well, to change his conduct—well, I have had them probably in the smoker would get a little loud. They would be bothering nobody, but among themselves, three or four men, they would be a little loud, talking, and the way I would get that quiet is I would go in and ring a false bell myself and I would say, "That man say he can't sleep," and that is the way I would work that.

Q. Have you ever reported any of those to the Pullman Company, any misconduct at all?

A. No, sir, I have never had to report nothing.

Q. You have never had any kind of a report on any misconduct to make to the company?

A. No, sir.

Q. Have you ever had to call on the train conductor for assistance?

A. No, sir, never, I have not since I have been in charge. Never have I had to call on them.

Q. The rest of the porters that act as conductors, have you ever heard of any of them having any trouble?

A. No, sir, I never did.

Q. There just wasn't any?

A. No, sir.

Q. Have you ever noticed any attempted misconduct between men and women on the trains?

A. No, sir, I never have, because there are very few lady passengers I haul. I don't haul many.

[fol. 270] Q. Do you ever have any colored passengers on the Pullman?

A. No, sir, I have never hauled any since I have been in the Pullman service, thirty years.

Q. How many porters are there on each car?

A. On which one? You mean on the car that I am on?

Q. Yes, when you are operating, when you are a porter on a Pullman car, how many porters are operating that car?

A. Just me. I am the onliest porter on the car.

Q. And that is true whether there is a conductor there or not?

A. If the conductor is there there is just one porter on a car, if the conductor is there, yes, sir.

Q. Have you ever handled a Pullman car with yourself in charge where there is more than one of such cars?

A. Yes, sir, I have had a car. Not at a starting point. I have had a car that had a conductor and was cut off, like say a car from Houston to Fort Worth and cut off at Ennis, but we had a conductor as far as Ennis. It is about fifty-five miles from Ennis to Fort Worth, and he would go in with the other car, you know, but of course everything had been checked up, you understand.

Q. Is that regularly that you have that?

A. No. No, sir, I haven't had that in over a year, it has been over a year since I have had that. Just once in awhile when there is an extra car that is put in line or something like that, yes, sir.

[fol. 271] Redirect examination.

#### Questions by Mr. Graves:

Q. Who handles the drunk passengers on the Pullman car when the Pullman conductor is there?

A. Well, if he can't do anything with them he has to go get the train conductor, the same as I would. I have seen them have to go get them for different occasions. That is about tickets or something, something concerned with a ticket. He just goes and gets the train conductor.

Q. Do they ever call on you to help them with drunk passengers?

A. Who?

Q. The Pullman conductors?

A. No, sir, he don't call on me, because if I have one on there I try to assist and do as much as I can without him telling me, yes, sir.

Q. Now, on this train that you are operating on now, where does the brakeman, the train brakeman, ride?

A. He rides on that car, the rear car, the same car I am on. The rear going and coming.

Q. Is that the rear on the train?

A. Yes, sir.

Q. Both ways?

A. Yes, sir, both ways.

Judge Sibley: That is generally true when you have a one car Pullman, isn't it?

A. Yes, sir, with one car, but leaving Houston I am the rear car, see, where there are four cars on the train, regular [fol. 272] cars on the train leaving Houston going north, and when we come into the train at Ennis they come from Dallas, the regular line, regular line cars. I hook on behind them. I am still the rear car. I am the rear car going both ways unless they have something behind me, a dead-head or something like that that is not in service, but as a general thing I am the rear car.

Q. Then does the brakeman ride in that car going both ways?

A. Yes, sir, both ways.

Q. Does the train conductor come through the car between Fort Worth and Ennis?

A. Oh, yes, sir, sure; yes sir, he comes back. Yes, sir, maybe two or three different times before I get to Ennis.

Q. Is that true going both ways?

A. Yes, sir, both ways.

(Witness excused.)

(At this time, 12:00 o'clock noon, Monday, February 19, 1940, a recess was taken in this case until 2:00 o'clock p. m., of the same day, at which time the following proceedings were had:)

[fol. 273]

Monday, February 19, 1940.

Afternoon Session: 2:00 P. M.

Judge Sibley: Call your next witness, please.

Mr. Graves: I will ask West and McBey to come around, so that they will be near the stand.

F. H. McBay, a witness for plaintiff, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is F.H. McBay?

A. Yes, sir.

Mr. Graves: Your Honor, this is an intervener plaintiff.

Judge Sibley: All right.

Q. You live at Fort Worth?

A. Yes, sir.

Q. How long have you lived at Fort Worth?

A. Twenty-five years.

Q. You are a Pullman porter?

A. Yes, sir.

Q. How long have you been working for the Pullman Company?

A. Twenty years.

Q. Are you on one of the lines known as a porter in charge line?

[fol. 274] A. Yes, sir.

Q. Which line is that?

A. Number 3531.

Q. That runs from where to where?

A. From Fort Worth to St. Louis. The Pullman car runs to Little Rock—it stops at Little Rock.

Q. The Pullman car stops at Little Rock?

A. Yes, sir.

Q. Were you born in Texas?

A. Yes, sir.

Q. Where?

A. Mexia.

Q. Are you a married man?

A. Yes, sir.

Q. Do you have any family?

A. Yes, sir.

Q. Do you have a wife and children?

A. I have a wife, a girl, and a boy.

Q. Any grandchildren?

A. One, yes, sir.

Q. One, you say?

A. Yes, sir.

Q. Do you belong to the church?

A. Yes, sir.

Q. What church?

A. Allen Chapel Methodist Church at Fort Worth.

Q. Do you drink?

A. No, sir.

[fol. 275] Q. How long have you been operating as a porter-in charge?

A. About four years.

Q. Have you been on this same line four years?

A. No, sir; I was over on the line to Houston for a while; and the line from Fort Worth on the Katy to Denison a while.

Q. That is three different porter in charge runs that you have had?

A. Yes, sir.

Q. Now, that is on the Texas Pacific, is it?

A. Yes, sir; Texas Pacific and Missouri Pacific.

Q. Combination of Texas Pacific and Missouri Pacific trains?

A. Yes, sir.

Q. The car leaves Fort Worth at what time?

A. 8:45.

Q. At night?

A. Yes, sir.

Q. And when are you put in charge of the car?

A. At Marshall.

Q. At Marshall, Texas?

A. Yes, sir.

Q. You are in charge from there until where?

A. To Little Rock.

Q. Little Rock, Arkansas?

A. Yes, sir.

Q. And the car goes ahead from there to Memphis?

A. Yes, sir.

Q. And coming back you are in charge from where?

[fol. 276] Q. Coming back, we have a conductor all the way.

Q. You operate, do you, from Memphis back to Fort Worth?

A. Yes, sir.

Q. What time does your car going north or east arrive at Marshall?

A. We get in there about 2:20 in the morning.

Q. And what time does it arrive at Texarkana?

A. 4:10 in the morning.

Q. So in the part of the run that is in Texas, you are in charge from Marshall to Texarkana?

A. Yes, sir.

Q. From 2:00 o'clock in the morning to 4:00 o'clock in the morning?

A. Well, I am in charge from Marshall to 8:10 in the morning. The car arrives at destination at 8:10 in the morning.

Q. That is at Little Rock?

A. Yes, sir.

Q. Yes; but the part in the State of Texas.

A. At 4:10 in the morning.

Q. Have you ever had any serious trouble of any kind with any passengers?

A. No, sir.

Q. Have you ever had a row, dispute, or fight with passengers on the train?

A. No, sir; never have.

Q. Have you ever had any trouble with drunk passengers?

A. No, sir; I have not. I have had drunk passengers on [fol. 277] the car, but I have never had any trouble with them.

Q. How do you go about handling a drunk passenger?

A. If a man is drunk on the car, the first thing I try to do is to get him to bed. If you can get him to bed pretty soon, he will go to sleep.

Q. Do you give him any instructions or orders?

A. No, sir, I don't give him any orders; I just coax him along. I give him service and try to get him to bed. If you can get him to bed, he is not into trouble.

Q. What are your instructions in case you should have a passenger on your car that you could not handle?

A. I would first notify the train conductor.

Q. Do you remember having had to do that on any occasion when you have been in charge?

A. No, sir; I have never had it to do.

Q. What does the Pullman conductor do, when he has trouble of that kind, if he is on the train?

A. He would notify the train conductor.

Q. You get how much extra pay per month for the service that you are now connected with—the porter in charge run?

A. \$13.50 a month.

Q. That is a porter in charge run in one direction, but it is not a porter in charge in the other direction?

A. Both ways. You get paid for it the round trip.

Q. You get paid just the same for a full porter in charge run?

A. Yes, sir.

[fol. 278] Q. \$13.50 a month?

A. Yes, sir.

Q. Do you own your home?

A. Yes, sir.

Q. Is it paid for?

A. No, sir; I owe \$300 on it.

Q. To whom?

A. The Fort Worth Building and Loan Association.

Q. How do you pay it out—quarterly, monthly, yearly, or how?

A. I have paid the first of every month.

Q. How much is that?

A. \$13.50 a month.

Mr. Morgan: We object to that.

Judge Sibley: The objection is sustained.

Mr. Graves: Does the Court rule out this last answer?

Judge Sibley: Yes, sir. I don't see the necessity of going into that. He is just trying to buy his home.

Q. How much education have you had?

A. High school and one year in college.

Q. Have you had any trouble of any kind?

A. No, sir; never in my life.

Q. Ever let a passenger make you mad?

A. No, sir.

Q. Suppose a passenger were to abuse you?

A. Well, that is my job; I am supposed to take it. I am [fol. 279] not supposed to get angry.

Judge Allred: You mean if you get angry, you don't let him know anything about it?

A. I am not so easily made angry.

Q. This car on this porter in charge run from Marshall to Little Rock is placed where in the train?

A. In the rear of the train.

Q. That is the rear car in the train?

A. Yes, sir; it is the only Pullman car on the train.

Q. Where does the brakeman ride on the train; as a rule?  
 A. On the rear.

Q. How many cars are there—passenger carrying cars in the entire train during that part of the run?

A. There is one chair car; and down to Marshall we have a New Orleans sleeper, and that makes two sleepers; but after they cut loose from me we have one sleeper, and we pick up a diner at Little Rock, and that makes one chair car, a diner, and a Pullman.

Q. Between Marshall and Little Rock what do you have?

A. One chair car and this sleeper.

Q. And the Pullman?

A. Yes, sir.

Q. Does the conductor ever come back in your car?

A. Very often, yes, sir.

Mr. Graves: That is all.

#### Cross-examination.

##### Questions by Mr. Lewis:

Q. Have you ever had an occasion to call the conductor to help you?

A. No, sir.

[fol. 280] Q. This is, the train conductor.

A. No, sir.

Q. Have you ever had occasion to call on the Pullman conductor to help you in any difficulty with passengers?

A. No, sir; I have never had occasion to call on any of them.

Q. Does the Pullman conductor ever have anything to do with disorderly passengers?

A. You mean like a drunk man or something like that?

Q. Yes.

A. The porter has that mostly to do. It is the job he has to worry with.

Q. Did you ever discuss that any with the Pullman conductor?

A. No, sir.

Q. Have you ever seen a Pullman conductor remonstrate with a man that was disorderly, or anything like that?

A. No, sir.

Q. You have never seen a Pullman conductor engage in anything of that nature?

A. No, sir.

Q. You have always done that yourself?

A. Well, I have had drunk men, but I just go ahead and get him to bed myself.

Q. Do you have drunk men to put to bed very frequently?

A. No, sir; just now and then; not often.

Q. Do any of them abuse you?

A. They raise sand sometimes, of course, but I manage to get them to bed and never disturb anybody. Maybe, they are in the smoker, and I let them stay there until they get sleepy, and then I get them to bed.

[fol. 281] Q. Do you ever notice any other misconduct between passengers or by passengers?

A. No, sir.

Q. Never seen any?

A. No, sir.

Q. What does the Pullman conductor do on the train?

A. His job is to sell space, take up tickets, and wire space.

Q. When he is not there, do you do it?

A. Yes, sir.

Q. Is that all he does?

A. He is over the Pullman car; it is his job to sell tickets and wire space,

Q. Most of the time don't they have their tickets when they get on the train?

A. Sometimes passengers have them, and sometimes they don't. You might pick up a man between points. Before he gets off, you might sell his space.

Q. What is the general rule, though, about tickets?

A. The general rule is get your tickets before leaving. I have had passengers come down just in the pinch of time and buy space on the train.

Q. About how often will that happen?

A. I couldn't say how often it will happen, but it happens once in a while.

Q. Every week, or two weeks, or a month?

A. It will happen nearly every once in a while, somebody coming around.

Q. Without a Pullman ticket?

[fol. 282] A. Yes, sir.

Q. But as a general rule, they will have their Pullman tickets when they get on the train?

A. Yes, sir.

Q. Under those circumstances, does anybody have any trouble showing him which is his berth?

A. No, sir, I have had no trouble showing him his berth when it is sold.

Q. That is already designated, is it?

A. Yes, sir.

Mr. Lewis: That is all.

Redirect examination.

Questions by Mr. Graves:

Q. Have you ever had any trouble making up diagrams?

A. No, sir.

Mr. Graves: That is all.

(Witness excused.)

W. J. WEST, a witness called by the plaintiff, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is W. J. West?

A. Yes, sir.

Q. You are a Pullman porter?

A. Yes, sir.

[fol. 283] Q. Where is your home?

A. My present home now is in San Antonio, Texas.

Q. How long have you lived in San Antonio?

A. Thirty-one years.

Q. Thirty-one years?

A. Yes, sir.

Q. How long have you been working for the Pullman Company?

A. Twenty years the 20th of April this coming April.

Q. Are you a married man?

A. Yes, sir,

Q. You have a wife and children?

A. Yes, sir.

Q. Do you belong to the church?

A. Yes, sir.

Q. Where were you born?

A. Matonia, Texas.

Q. On what train are you regularly operating as a porter?

A. On M. K. T. train No. 4 and 3 between San Antonio and Kansas City. The car goes to Kansas City from San Antonio.

Q. Do you go with the car from San Antonio to Kansas City?

A. Yes, sir.

Q. And back?

A. Yes, sir.

Q. Over what part of that trip is the porter in charge?

A. He is in charge from San Antonio to Fort Worth going north, and from Waco, Texas, to San Antonio, Texas, coming back south.

Q. Is that a daylight operation during the part of the trip [fol. 284] that the car is in charge of the porter?

A. It is daylight operation both ways in charge.

Q. Now, let's see—what time do you get to Fort Worth?

A. I get to Fort Worth at 9:45.

Q. At night?

A. At night, yes, sir.

Q. How long have you been on that run?

A. Nine months.

Q. All of the passengers on that part of the run are seat passengers, are they?

A. Most of them are seat passengers.

Q. Most of them are seat passengers?

A. Yes, sir.

Q. Of course, you have some through passengers that have through space?

A. Once in a while. We hardly ever have over one or two beds going through from San Antonio all the way through. Sometimes I may pick up a bed from Austin to Kansas City, but most times I just have seat passengers to Fort Worth and Dallas.

Q. What is what these railroad men call the "consist" of this train? How many cars does that train have?

A. That train has a Pullman car that starts at San Antonio; it has two day coaches, and I think one or two baggage cars, and a mail car.

Q. It has three cars that carry passengers?

A. Yes, sir.

Q. Where does the brakeman ride in the train, as a rule? [fol. 285] A. Most of the time he rides back there in the observation car on the rear end of the train.

Q. This observation car, is that the car you are in charge of from San Antonio to Fort Worth, and then from Waco to San Antonio?

A. Yes, sir.

Q. Does the conductor come through the train frequently or infrequently?

A. Some come through very frequently, and some don't come through so frequently, because, I guess, probably he is busy up ahead in the day coach; but most of them, after they check the day coach, they come back to the Pullman coach.

Q. Have you had any trouble on the train with passengers?

A. I have not had what I call trouble, no, sir. I have not had what I call trouble with no passengers. I never have had no trouble; that is, personal trouble.

Q. Have you had any experience with passengers on your car who had had too much to drink?

A. Yes, sir, I have, one or two men. I will say two men since I have been on this line.

Q. Was it serious enough that you had to call the train conductor, or what did you do about it?

A. Well, I think it might not have been serious enough, but I went and called the train conductor in this particular case.

Q. One of these cases?

A. Both cases I called the train conductor. The first case [fol. 286] was a man that got on at Austin, and he had a stub reading from Fort Worth to Austin, and when I went to check the Pullman transportation, he offered me this stub, and I asked him—I told him I couldn't honor it because it had already been used; and he said, "When did they get damn black nigger conductors on these cars?" I smiled and did not say anything. There were probably five or six men sitting in there who had already given their transportation up; and when he said, "No, I am not going to pay no seat fare to no damn nigger conductor," I thought—

Q. Did you tell him you were a conductor?

A. No, sir. He said, "When did they get damn nigger Pullman conductors on this car?" I said, "Captain, I am not a conductor; I am just a porter in charge, that is all." Then he said, "I am not going to pay you."

Q. Did you report that to the train conductor?

A. Yes, sir.

Q. What did he do about it?

A. He came back and told him that he would have to pay the seat fare to the porter if he wanted to ride back in the Pullman, or he would have to go up front.

Q. Did he pay it?

A. No, sir; he said, "Well, I will go up ahead. Where do you want me to sit?"

Q. All right. Have you ever had any real rows with the passengers?

A. No, sir; never in my life.

Q. Have you ever had any experiences on these cars where one passenger was mistreating another passenger?

[fol. 287] A. Well, one experience, where it would have been a mistreatment if probably I had not been right there and prevented it from being a mistreatment.

Q. Did you have any trouble handling it?

A. No, sir; I did not have any trouble handling it.

Q. Have you had any trouble making up your diagrams or reports to the Pullman Company?

A. No, sir; I have never had any trouble.

Mr. Graves: That is all.

#### Cross-examination.

##### Questions by Mr. Lewis:

Q. About how frequent do you observe people that have been drinking too much, or who are boisterous for some reason or another?

A. Well, I observe them at all times, because I am in the car at all times with them.

Q. About how often does that happen? Is that a fairly everyday occurrence?

A. No, sir; very seldom that I have had to contend with drunks on the cars.

Q. Sometimes they get drunk so that you have to contend with them, don't you?

A. No, sir; I don't remember of having any drunks. Most of the people who ride in the Pullman cars, very few of them are drunkards; most of them are high-class people.

Q. I believe you said the brakeman sometimes rides in the Pullman?

A. Yes, sir.

[fol. 288] Q. Whereabouts in the Pullman?

A. He sometimes rides in Section 1 or Section 2, probably opposite where I am sitting, if there are passengers in the observation end. When there are no passengers in the observation end, most of the time he will sit back in the observation end.

Q. Does he ride back there all the time, or is that sort of an exception?

A. He is first there, and then up at the front portion of the train. He has duties to perform on the front end at various times also.

Q. Which place does he spend most of his time?

A. When he is not arriving at some station very soon where he has to perhaps receive or discharge passengers on the head end, he spends all of his time back there.

Q. How many reports have you made to your company concerning disorderly conduct on the part of passengers?

A. Just two.

Q. Just the two you mentioned?

A. Yes, sir.

Q. Have those been the only instances of disorderly conduct that you remember?

A. The only ones that I can remember of during my twenty years.

Q. Do lewd women ever get on the cars?

A. Yes, sir; quite a few ladies I handle on my cars.

Mr. Graves: I think he misunderstood you.

[fol. 289] Q. Are you bothered with lewd women getting on the cars soliciting business?

A. No, sir; I have never seen a woman of that kind on the car. If she was one, I didn't know it.

Mr. Lewis: That is all.

#### Redirect examination.

##### Questions by Mr. Graves:

Q. You worked in San Antonio before you worked for the Pullman Company?

A. Yes, sir; I did.

Q. Did you ever work for the Government?

A. Nine years in the Army.

Q. Did you ever work anywhere else there in San Antonio?

A. I worked at the Gunter Office Building eight and a half years; at the Gibbs Building two years; and I worked at the Post Office extra about two or three months before I came back on this job.

Mr. Graves: That is all.

(Witness excused.)

RIP C. UNDERWOOD, a witness called by the plaintiff, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is Rip C. Underwood?

A. Yes, sir.

Q. You live at Amarillo?

A. Yes, sir.

[fol. 290] Q. What is your business?

A. I am in the oil business.

Q. You are also an attorney, are you not?

A. I used to be.

Q. In recent years have you had occasion to travel much or little?

A. Quite a bit.

Q. Do you use the railroads and Pullman cars for most of your travel?

A. Yes, sir.

Q. Have you had occasion to travel on any of these Pullman cars that were in charge of porters and where no Pullman conductor was present on the train?

A. Yes, sir; I have, quite a few.

Q. Do you recall any specific lines of that kind that you have ridden on?

A. Well, I go to Oklahoma City quite frequently.

Q. On the Rock Island?

A. Yes, sir; and I know that situation prevails there; and I have ridden—I can recall a number of instances where I have bought my space from the Pullman porter, and I assumed he was in charge.

Q. Have you ridden frequently on the T. & P. between Marshall and Texarkana?

A. Yes, sir, I was down at Texarkana quite a bit, and I have ridden that route; and also between Amarillo and Texline and Dalhart.

Q. On the Fort Worth and Denver?

A. On the Fort Worth and Denver up there, yes, sir.

[fol. 291] Q. Have you ever ridden the daytime train that leaves here on the Katy at 3:55 in the afternoon for Fort Worth and Dallas?

A. Yes, sir.

Q. Well, that car was in charge of a porter, wasn't it?

A. Yes, sir.

Q. What has been your observation as to the kind of service rendered to Pullman passengers on those cars, as compared with the service that the passengers get on the cars where the Pullman conductor is on the train?

A. Well, my observation has been that there has been no difference.

Q. Have you ever seen a Pullman porter have any trouble of any kind on a train?

A. No, sir.

Q. Are the cars kept as clean and neat and in as good condition under those circumstances as they are where the conductor is present?

A. Well, they have always been clean so far as I have noticed it either way.

Mr. Graves: That is all.

#### Cross-examination.

##### Questions by Mr. Morgan:

Q. Mr. Underwood, do you have any children?

A. No, sir.

Mr. Morgan: That is all.

(Witness excused.)

[fol. 292] LEROY BROWN, a witness called by the plaintiff, having been duly sworn, testified as follows:

#### Direct examination.

##### Questions by Mr. Graves:

Judge Allred: How many of these Pullman car porters are you going to have?

Mr. Graves: About six, in addition to this one. We don't want to over-do this thing, but that is—

Judge McMillan: Mr. Graves, is your porter testimony all practically the same, or is there any variance?

Mr. Graves: I don't believe there is any substantial variance. The three porters that have testified so far are the three intervenor plaintiffs. Some of these other porters have operated on other lines, but we don't propose to show that the record varies any. We think the record is about the same.

Judge McMillan: Can't parties stipulate that these other witnesses would testify to the same thing if put on the stand?

Mr. Culbertson: There has been a little variance.

Judge McMillan: Well, if you want to cross-examine them, I guess you have a right to do it.

Q. Your name is Leroy Brown?

A. Yes, sir.

Q. Are you employed by the Pullman Company as a porter?

[fol. 293] A. Yes, sir.

Q. Do you live in Fort Worth?

A. Yes, sir.

Q. How long have you worked for the Pullman Company as a porter?

A. Thirty-one years.

Judge McMillan: Where did he say he lived?

A. At Fort Worth.

Q. How long have you been living in Fort Worth?

A. Thirty-one years.

Q. Are you a married man?

A. Yes, sir.

Q. Where were you born?

A. Altheimer, Arkansas.

Q. How long have you lived in Texas?

A. Thirty-one years.

Q. How old are you now?

A. Fifty-one.

Q. On what line are you now running as a porter?

A. Fort Worth to Austin.

Q. How long have you been running on that line?

A. A little more than two years.

Q. Do you get porter in charge pay for operating on that line?

A. Yes, sir.

Q. And that is because the car is set out here in the morning after it gets here?

A. It is set out here at 4:30 in the morning.

Q. And from 4:30 in the morning until 6:30 you are [fol. 294] in charge of the car?

A. Until 8:00 o'clock.

Q. And at night when you receive passengers on this same car on the trip from Austin to Fort Worth, the car is in charge of the porter during what time?

A. From 11:30 until 1:20 in the morning.

Q. When the train leaves?

A. Yes, sir.

Q. Have you ever had any other porter in charge operations?

A. Yes, sir.

Q. Where?

A. Between Fort Worth and Denison on the Texas Special.

Q. On the Texas Special?

A. In route to St. Louis.

Q. On the Texas Special?

A. Yes, sir.

Q. Now, the main line of the Texas Special—the main train goes through Dallas?

A. Yes, sir.

Q. And there is a branch line that goes from Fort Worth to Denison, and there is combined with the main train?

A. Yes, sir.

Q. And the car was in charge of the porter from Fort Worth to Denison?

A. Yes, sir.

Q. How long did you run on that line?

A. Between three and four years.

Q. Is that all the porter in charge experience that you have had?

A. No, sir.

[fol. 295] Q. Where else?

A. Between Fort Worth and Amarillo.

Q. On what railroad?

A. On the Fort Worth and Denver.

Q. Did you stop in Amarillo?

A. Yes, sir.

Q. You were on a car that was set out at Amarillo?

A. It was a daylight run, leaving Fort Worth and arriving in Amarillo, and back.

Q. During what part of the time were you in charge?

A. The entire trip both ways.

Q. Both ways on the Fort Worth and Denver?

A. Yes, sir.

Q. How long were you on that run?

A. Two years.

Q. Do you recall any others?

A. From St. Louis to Little Rock.

Q. On what road?

A. Missouri Pacific.

Q. How long were you on that?

A. About a year.

Q. Now, you referred to the Fort Worth and Denver run. Did you ever run on that same road all the way through from Fort Worth or Dallas to Denver?

A. Yes, sir; Colorado Springs and Denver.

Q. Colorado Springs and Denver?

A. Yes, sir.

Q. How long did you run on that line?

[fol. 296] A. Off and on for three or four years.

Q. While you were running on that line, did you ever have parents put their children on your car on that train run?

A. Yes, sir.

Q. In your charge?

A. Yes, sir.

Q. Has that happened frequently or infrequently?

A. It happens more on the Texas Special.

Q. It happens more on the Texas Special?

A. Yes, sir, between Fort Worth and Denison, with children going to school.

Q. Have you ever had any trouble of any kind on the train with a passenger?

A. Nothing serious.

Q. Have you had drunk passengers on your train?

A. Yes, sir.

Q. Have you ever had any trouble handling drunk passengers?

A. No, sir.

- Q. How do you go about handling them?
- A. He is always the boss. I let him have his way.
- Q. Do you let him impose on other passengers?
- A. No, sir; I have never had any that made any attempt to impose on anybody.
- Q. If a passenger abuses you, what do you do about that?
- A. He never knowed it.
- Q. Does it make you mad?
- A. Yes, sir.
- Q. But he doesn't know it?
- A. No, sir.
- [fol. 297] Q. Have you ever had any unfriendly words with a passenger?
- A. No, sir.
- Q. On these porter in charge cars that you ran on, where did the brakeman usually ride?
- A. The present run I am on, the brakeman rides in my car from Waco to Austin.

Judge McMillan: Unless the other people are going to controvert it, do you think you ought to accumulate that evidence? If they are going to controvert it, all right. You have already proved it by four witnesses.

Mr. Graves: All right. That is all.

#### Cross-examination.

##### Questions by Mr. Lewis:

- Q. You say you have not had any serious trouble: What was the nature of any trouble that you did have?
- A. When a drunk man boards my car, I never consider that serious. I have just always considered that part of my work.
- Q. Does that happen rather frequently?
- A. No, sir.
- Q. When one of those men abuses you, you just pass it off and go on?
- A. Yes, sir.
- Q. Do they do that in the presence of other passengers?
- A. They do do it.
- Q. Do you report that to anyone?
- A. No, sir.
- Q. Have you ever noticed any disorderly conduct upon one passenger towards another?

A. Not that I remember.

[fol. 298] Q. Have you ever noticed men trying to form fresh acquaintances with ladies?

A. No, sir; not recently.

Q. Have you noticed that on some occasions?

A. Well, during the oil boom at Amarillo it happened over there once or twice.

Judge McMillan: I didn't quite hear you.

A. During the oil boom at Amarillo I have had it happen.

Judge Allred: In trying to get acquainted with ladies on the train?

A. Yes, sir.

Q. Have you ever had charge of more than one Pullman car or run?

A. Yes, sir.

Q. That is when the Pullman conductor was not on it?

A. Not regularly.

Q. How frequently?

A. Well, I have had—oh, two or three times.

Q. Can you handle that as well as you do one?

A. No, sir.

Q. Are there other porters on the other cars too?

A. Yes, sir.

Q. On those occasions when a man passenger would try to make a fresh acquaintance with a lady, what would you do about it?

A. Report it to my conductor, if I had one.

Q. If you did not have one, what would you do?

A. Report it to the train conductor.

Q. How many times did you do that?

[fol. 299] A. I don't remember ever having to go to the train conductor about a thing like that.

Mr. Lewis: That is all.

Redirect examination.

Questions by Mr. Graves:

Q. Have you ever run on a line where you received in charge as you do here at Austin?

A. Yes, sir.

Q. Where?

A. Colorado Springs.

Q. Did you ever run in Texas on some other line in Texas where you received in charge?

A. At Wichita Falls.

Q. How long did you run on that line?

A. Seven years.

Q. Seven years?

A. Yes, sir.

Q. That is, there was set out a car at Wichita Falls, and you received the passengers in charge?

A. Yes, sir.

Judge Allred: About when was that?

A. That was during the oil boom, during 1914 to 1917, along there.

Q. You say that was back in 1915, 1916?

A. Yes, sir; during the War; and during the oil boom at Burk Burnett out from Wichita Falls.

Q. What would you do if a passenger conducted himself in [fol. 300] such a way that he was interfering with other passengers or annoying other passengers?

A. If there was a conductor, I would report it to the conductor.

Q. What is your instructions with reference to reporting it to the train conductor?

A. To report it to the train conductor when I am in charge and do not have a Pullman conductor.

Mr. Graves: That is all.

(Witness excused.)

Mr. Graves: We will ask J. P. Sample next.

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J. P. SAMPLE, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is?

A. J. P. Sample.

Q. J. P. Sample?

A. Yes, sir.

Q. You are employed by the Pullman Company as a porter?

A. Yes, sir.

Q. Are you operating on a line known as a porter in charge run?

A. Yes, sir.

Q. What is your run?

A. No. 3725.

[fol. 301] Q. From where?

A. From Harlingen to Brownsville and return.

Q. But where do you begin your run?

A. Houston to Brownsville.

Q. The train operates between Houston and Brownsville?

A. Yes, sir.

Q. And the car that you are on operates between Houston and Brownsville?

A. Yes, sir.

Q. On the St. Louis, Brownsville & Mexico Railroad?

A. Yes, sir.

Q. That is part of the Missouri Pacific system?

A. Yes, sir.

Q. Where were you born?

A. Victoria, Texas.

Q. What is your age?

A. Fifty-seven.

Q. Are you married?

A. Yes, sir.

Q. Have children?

A. Yes, sir.

Q. Where do you live, Houston?

A. Houston.

Q. Live at Houston?

A. Yes, sir.

Q. How long have you been on this particular line?

A. Well, I have been on this line several times off and on since 1918; this last time regular since there was a change made in the line a little over a year ago, but I had just been [fol. 302] off a little while, and then I went back.

Q. Have you ever lived at Victoria?

A. Yes, sir, I know everybody in Victoria.

Q. How is that?

A. I know everybody in Victoria.

Q. How long did you live there?

A. Well, I was born there, and I have been in Houston about thirty-six—thirty-four years; I came from Victoria to Houston.

Q. All right. Now, have you ever had any trouble with passengers while you were running in charge?

A. No, sir.

Q. Have you had any experiences with drunk passengers?

A. Well, no, sir, not enough to mention, because our company requires us to make a statement about the least thing that happens on the cars that is unusual, and I have never had to do that.

Q. Your train carries a Pullman conductor, and how many Pullman cars, between Harlingen and Houston?

A. Two.

Q. And one of those cars goes on to Mission?

A. Goes to Mission, yes, sir.

Q. In charge of the conductor?

A. Yes, sir.

Q. And the other car goes to Brownsville?

A. Yes, sir.

Q. In your charge?

A. Yes, sir.

Q. You get the full porter in charge extra pay—

[fol. 303] A. Yes, sir.

Q.—for operating that twenty-five miles round trip?

A. Yes, sir.

Q. Have you had any experience on your train where passengers insulted other passengers, or mistreated other passengers?

A. No, sir, as a rule, the general in charge lines are lines that do not haul very many people anyway, and there is no way to have a fuss on my car hardly between Brownsville and Harlingen.

Q. What is the average number of passengers on that car?

A. Sometimes two or three, but when I catch Judge Allred and his bunch I have plenty of passengers.

Judge Allred: Nothing ever happens on those trips?

A. No, sir.

Judge Allred: Right there, what time does that train get into Harlingen in the morning?

A. In the morning at 6:50.

Judge Allred: And what time do we get to Brownsville?

A. At 7:55. We don't leave Harlingen though until about 6:55.

Judge Allred: You mean that is 7:00 o'clock?

A. Yes, sir, I mean 7:00 o'clock.

Judge Allred: What time does it leave Brownsville in the evening?

A. It leaves Brownsville in the evening at 9:00 o'clock.

[fol. 304] Judge Allred: What time is it back up there at Harlingen?

A. 9:50.

Judge Allred: 9:50. All right.

Mr. Graves: That is all, gentlemen.

#### Cross-examination.

Questions by Mr. Lewis:

Q. Does anybody ever get on the Pullman that has an infectious or contagious disease?

A. Not that I know of.

Q. You have never seen that?

A. No, sir.

Mr. Lewis: That is all.

(Witness excused.)

Mr. Graves: Eli Morgan is our next witness.

ELI MORGAN, a witness for plaintiffs, having been duly sworn, testified as follows:

#### Direct examination.

By Mr. Graves:

Q. Your name is Eli Morgan?

A. Yes, sir.

Q. And you work for the Pullman Company as a porter?

A. Yes, sir.

Q. Are you operating on a line known as a porter in charge line?

A. Yes, sir.

[fol. 305] Q. What line is that?

A. It is line No. 3106 on the Fort Worth and Denver, between Dallas and Denver.

Q. Between Dallas and Denver, Colorado?

A. Yes, sir.

Q. That line operates during the busy season, during the summer time, with a conductor, does it?

A. Yes, sir.

Q. And during the off season—

A. With a porter in charge from Amarillo to Denver.

Q. How is that?

A. With a porter in charge from Amarillo to Denver and back.

Q. Yes. Your car runs all the way out from Dallas to Denver and back?

A. Yes, sir.

Q. And you are in charge of the car from Amarillo to Denver, and back to Amarillo?

A. Yes, sir.

Q. Does the train have more than one Pullman car on it between Dallas and Amarillo?

A. Yes, sir, it has two as far as Amarillo.

Q. One car sets out at Amarillo?

A. Yes, sir.

Q. And you go on with the train to Denver?

A. Yes, sir.

Q. How long have you been running on that line?

A. I have been running on that line between three and four years.

Q. Have you had any other porter in charge experience?

[fol. 306] A. Yes, sir, I ran on the Frisco, Santa Fe they call it, between—to St. Louis. That line has a car that goes from Dallas to Fort Smith in charge.

Q. You have run on that line?

A. Yes, sir.

Q. Any others?

A. Yes, sir, I run a line between Dallas and Alfus, Oklahoma, by way of San Angelo, up to Altus; I run from Sweetwater to Altus and back to Sweetwater in charge.

Q. Any other porter in charge experience?

A. Yes, sir, I run on a line between Dallas and St. Louis, from Wichita Falls to Whitesboro, in charge, and back.

Q. That was on the Katy?

A. Yes, sir.

Q. That line has been discontinued, hasn't it?

A. Yes, sir.

Q. You ran from Fort Worth to Wichita Falls in charge?

A. From Wichita Falls to Whitesboro in charge.

Q. To Whitesboro?

A. Yes, sir.

Q. And there it connected with another train?

A. Yes, sir.

Q. How long did you run on that line?

A. I ran on that line about three years.

Q. Do you remember any other porter in charge experience?

A. Yes, sir, I ran between Dallas and Shreveport, in charge.

Q. On what train?

A. On the M. K. & T., from Greenville to Shreveport in charge, and back to Greenville.

[fol. 307] Q. Well, is that all?

A. No, sir, I operated on a line between Dallas and Texarkana and Waco in charge, from Mt. Pleasant to Waco, and back, in charge.

Q. Any more?

A. No, sir, that is all.

Q. That is all?

A. Yes, sir.

Q. Have you had any trouble with a passenger on any of those operations?

A. No, sir, none whatever.

Q. Have you ever had any passengers on your train who had had too much to drink?

A. Yes, sir, I have seen many that had too much to drink.

Q. Have you ever had any of them to abuse you?

A. Well, a little, yes, sir.

Q. What did you do about that?

A. Well, the way I do about that, I just keep smiling and he never knows whether he abuses me or not.

Q. Suppose there is conductor, a Pullman conductor, on the train, do you have drunk passengers on those trains too?

A. Well, yes, sir, I have had them when there was a Pullman conductor with me.

Q. As a rule who handles the drunk passenger, whether there is a Pullman conductor there or not?

A. Well, as a rule the train conductor always handles them.

Q. Who puts him to bed?

A. Well, I put him to bed.

Q. Have you ever had parents to put children in your charge?

A. Yes, sir.

Q. Well, on what runs?

[fol. 308] A. Well, I have had them to put them in my charge on this run I am on now; I had a man to put a little boy in my charge from Amarillo to Denver, and then I have had some people put their boy in charge from Denver to Dallas with me and back.

Q. Have you ever had any old people in your charge, old ladies?

A. Yes, sir.

Q. Have you ever had any experience on your train where one *one* passenger mistreated another passenger?

A. No, sir, ~~none~~ whatever.

Q. Did you have any trouble making up your diagram?

A. No, sir.

Judge McMillan: Where do you live?

A. Dallas.

Q. You live at Dallas. Do you operate out of Dallas?

A. Yes, sir.

Q. Now?

A. Yes, sir.

Q. Where were you born?

A. Navasota, Grimes County, Texas.

Q. Navasota in Grimes County?

A. Yes, sir.

Q. Are you a married man?

A. Yes, sir.

Q. How old are you?

A. Fifty-six.

Mr. Graves: That is all, gentlemen.

[fol. 309] Cross-examination.

Questions by Mr. Morgan:

Q. You say your name is Morgan?

A. Yes, sir, Eli Morgan.

Q. Where did you family come from to Texas?

A. Georgia.

Q. Georgia?

A. Yes, sir.

Q. Eli, were you the porter in charge on that train from Denver down to Dallas recently and you had a little confusion about a drawing room for Mr. Gilbert down at Amarillo?

A. No, sir, I wasn't.

Q. You are not the one?

A. No, sir.

Q. Do you know where that boy is now?

A. No, sir, I don't.

Q. You know about that, don't you?

A. No, sir, I don't.

Q. You don't know about that?

A. No, sir.

Mr. Morgan: All right, that is all.

(Witness excused.)

Mr. Graves: We will have Harry Sinclair next.

[fol. 310] H. H. SINCLAIR, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is H. H. Sinclair?

A. Yes, sir.

Q. You work for the Pullman Company as a porter?

A. Yes, sir.

Q. What is your age?

A. I will be sixty-one my next birthday; I am sixty past now.

Q. You are sixty years of age?

A. Yes, sir.

Q. Where do you live?

A. I live at Lamarque now, in Galveston County.

Q. Lamarque?

A. Yes, sir.

Q. That is about—

A. About fourteen miles from Galveston.

Q. Do you own your home?

A. Yes, sir.

Q. Is it paid for?

A. Not quite.

Q. How long have you been employed by the Pullman Company?

A. Thirty-three years.

Q. Did you start out as a porter?

A. No, sir.

Q. Started out as a cleaner?

A. Cleaner, yes, sir.

[fol. 311] Q. When?

A. 1906.

Q. And you have been operating as a porter regularly since when?

A. Regular since 1910.

Q. Now, you travel on the train—your regular run now is on the—a train that operates between Galveston and St. Louis, is that right?

A. Yes, sir.

Q. On what railroad?

A. Missouri Pacific.

Q. And you live at the Galveston end of the run?

A. Yes, sir, at Lamarque in Galveston County.

Q. Where do you stay in St. Louis?

A. At the Y. M. C. A.

Q. How long have you been running on this one line?

A. Oh, I have run in charge over there for about seven years, but I have been operating on the Missouri Pacific before the Sunshine was put on, oh, I guess about twenty or twenty-five years ago.

Q. Have you ever had any other porter in charge experience?

A. Yes, sir.

Q. On what railroad?

A. The Santa Fe.

Q. How long did you run on that?

A. About, oh, about a year or year and a half.

Q. Now, you are in charge of a Pullman car between Galveston and Houston?

A. Yes, sir.

Q. On the north or west bound trip, that train leaves Gal-[fol. 312] veston when?

A. Ten-thirty in the morning.

Q. And arrives at Houston at about?

A. At 11:59.

Q. At 11:59, and then at the other end of the trip when you are coming back, what time does the train arrive at Houston?

A. It arrives in Houston at 12:55.

Q. P. M.?

A. Yes, sir.

Q. And arrives—and then it goes to Galveston, and arrives there at about what time?

A. 2:40.

Q. 2:40 in the afternoon?

A. Yes, sir.

Q. Approximately how many passengers do you handle on that car between Galveston and Houston?

A. Well, about three or four on an average; sometimes going to Galveston we have more, more than three or four, to Galveston, but Galveston only holds two sections in the car out of Galveston; Houston holds the rest of it.

Q. Do you sell the Pullman transportation at Galveston?

A. No, sir, most of them have tickets; sometimes a passenger may come up after he has made a reservation and didn't get to the ticket office in time to buy his ticket, and his name is on the diagram, I might possibly have a telegram that lower four or lower nine is reserved for him in his name, and I would sell it to him then, or I might pick up a passenger between Galveston and Houston, and if this [fol. 313] space was open and the passenger got on and wanted a berth to St. Louis I would sell it to him.

Q. Have you ever been on a porter in charge run where you operated at night?

A. Not all night, part of the night.

Q. Well, that train that you ran on on the Santa Fe, you were in charge between what points?

A. Well, I had one line on the Santa Fe from Galveston to Fort Worth and from Fort Worth back to Galveston; and then I ran on the tourist car line a good many years ago from Galveston to Los Angeles; I was in charge of the car

from Galveston to Fort Worth, and in charge of the car from Oklahoma City to Newton, Kansas.

Q. That was line 14?

A. That was not line 14; the tourist car line was not, but the other line was line 14; I forgot the number of the tourist car line.

Q. Were you born in Texas?

A. Yes, sir.

Q. Where?

A. Corpus Christi.

Q. Do you belong to the church?

A. Yes, sir, Avenue L Baptist Church, in Galveston.

Q. Are you a married man?

A. Yes, sir.

Q. Own your home?

A. Yes, sir.

[fol. 314] Q. Well, I asked you about that.

A. Yes, sir.

Q. I beg pardon. You have one adopted child?

A. Yes, sir.

Q. Well, on any of these porter in charge operations where you were in charge, have you ever had any trouble of any kind?

A. No, sir.

Mr. Graves: That is all.

Mr. Lewis: No questions.

Mr. Morgan: No questions.

(Witness excused.)

[fol. 315] T. M. PALMER, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is T. M. Palmer?

A. Yes, sir.

Q. You are employed by the Pullman Company as a porter?

A. Yes, sir.

Q. Are you operating on a line known as an in charge line?

A. I am.

Q. From what point to what point?

A. From Denison, Texas, to Kansas City and from Kansas City back to Denison, Texas.

Q. On the M. K. & T.?

A. Yes, sir, line 3273.

Q. Where were you born?

A. Texas, Burleson County.

Q. Burleson County?

A. Yes, sir.

Q. At Caldwell or near Caldwell?

A. Near Caldwell.

Q. How old are you?

A. Fifty-six.

Q. Where do you live?

A. San Antonio.

Q. Well, your train then—the train that you operate on, [fol. 316] plies between Kansas City and San Antonio, is that it?

A. Yes, sir.

Q. But you are in charge of the Pullman car between Denison and Kansas City?

A. Yes, sir, I have a conductor to Denison.

Q. You have a conductor between Denison and San Antonio, both ways?

A. Both ways.

Q. Yes. Now, approximately how far is it from Denison to Kansas City?

A. Well, I figure on it being about 400 miles.

Q. Around 400 miles?

A. Yes, sir.

Q. Do you operate a round trip of about 800 miles without a conductor?

A. Yes, sir, I am due to leave Denison at 11:40 a. m., and I don't see a conductor until 7:00 o'clock the next afternoon.

Q. Well, you don't have a conductor on your train until you get back to Denison, do you?

A. No, sir; I mean until 7:00 o'clock the next day, p. m.

Q. I see. Now, the part of that trip that is in charge of the porter in the State of Texas is from Denison to Platter, is it? Denison to the state line?

A. Yes, sir. Well, we always call—

Q. Just a few miles?

A. We call it Red River.

Q. You call it Red River?

[fol. 317] A. Yes, sir, it is about five miles.

Q. About five miles. The rest of it is out of the state of Texas?

A. Out of the state of Texas.

Q. You are a married man?

A. I am.

Q. Own your home?

A. I am buying it.

Q. How long have you been with the Pullman Company?

A. I think I have about twenty-three years service, but I have been with them continuously about twenty.

Q. Continuously for twenty years?

A. Yes, sir.

Q. What other employment have you had?

A. Well—

Q. What were you doing when you went with the Pullman Company the last time?

A. I am a barber by trade.

Q. I see.

A. I was barbering.

Q. I see. I thought you worked for the Y. M. C. A. for a while?

A. Well, that is why I said continuously. In 1916 I commenced working for the Pullman Company, and then I entered the army in about 1917.

Q. I see.

[fol. 318] A. And I was the building secretary of the Y. M. C. A. during the war—the World War.

Q. I see. Have you ever had any trouble with passengers on your train?

A. No, sir, not yet.

Q. Have you had experience with drunk passengers?

A. Some, yes, sir.

Q. Have you ever had any experience where the conductor or the—the Pullman conductor or the train conductor called on you to help them with a drunk passenger?

A. No, sir, not with a train conductor, but sometimes I have when I had a conductor; we would have a drunk man on, and of course the conductor would tell me he is drunk, and I says, "Well, let me handle him, probably I can do a little more with him than you can." So I go at him in a nice way; if it is night I get him to bed, put him to bed, and then I—and he commences telling me,

"Porter, you are my friend," and I say, "Oh, yes, I am right with you," and I say, "get in the bed," and he says, "all right."

Mr. Graves: That is all.

Cross-examination.

Questions by Mr. Culbertson:

Q. Let me ask you one question. Have you ever in your experience had any occasion to see a man and a woman trying to get acquainted in Pullman cars, or a man and a woman?

A. No, sir.

Q. How long did you say—twenty-three years with the [fol. 319] Pullman Company?

A. Yes, sir, I have twenty years service.

Q. Now, during all that twenty-three years have you ever seen a man trying to make a fresh acquaintance with a young lady or a lady on a Pullman car?

A. Oh, I have seen men in the day time go up and get acquainted with a lady, maybe she is riding alone, and finally maybe the man gets acquainted with her and they commence talking civilly and modestly, and sometimes they would even carry them to lunch or dinner, but I don't think he was trying to be even fresh; I never have seen nothing like that.

Q. The average white man in Texas would resent any attempt to correct him if he committed any misconduct, wouldn't he?

A. I don't know.

Q. How is that?

A. I say I don't know.

Q. You don't know?

A. No, sir.

Q. Have you ever had a white man resent any attempt on your part to perform your duties?

A. None, no, sir.

Q. You never have had that to happen at all?

A. No, sir.

Mr. Culbertson: That is all.

(Witness excused.)

[fol. 320] CHARLEY THURMOND, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is Charley Thurmond?

A. Yes, sir.

Q. What is your age?

A. Fifty-nine, sixty my next birthday.

Q. Sixty your next birthday. How long have you been with the Pullman Company?

A. Thirty four years.

Q. Thirty-four years?

A. Yes, sir.

Q. Have you had any experience operating as a porter in charge?

A. Yes, sir.

Q. Are you operating on such a line now?

A. Yes, sir.

Q. Well, first I will ask you where do you live?

A. Fort Worth.

Q. How long have you lived in Fort Worth?

A. Thirty-five years.

Q. Are you a married man?

A. Yes, sir.

Q. Own your home?

A. Yes, sir.

Q. All right. Now, Charley, you—how much education

[fol. 321] have you had?

A. I spent two years in Bishop College, after finishing high school.

Q. What line are you now operating on?

A. 3271.

Q. From Fort Worth to Austin?

A. Yes, sir.

Q. Is that the same line that Leroy Brown is on?

A. Yes, sir.

Q. All right. You heard his description of it, and you and he are on the same run?

A. Yes, sir.

Q. In other words, you come down one night and he comes down the next night?

A. Yes, sir, the car I carry in he brings it out.

Q. Yes. Now, have you had any other porter in charge experience?

A. Yes, sir.

Q. Tell us about some of them.

A. Let's see, I ran—well, let's see, I hauled soldiers during the war fourteen months in charge.

Judge Sibley: That is over with. We are thankful that these are peace times.

A. Yes, sir, I am glad too, Judge. And I run between Amarillo and Sweetwater.

Q. On what railroad?

A. The G. C. & S. F.

Q. The G. C. & S. F.?

A. Yes, sir.

[fol. 322] Q. And you were in charge on that line?

A. Yes, sir.

Q. Well, what about the Brownwood, Sweetwater and Wichita Falls?

A. In charge at Sweetwater—at Wichita Falls.

Q. What about from Wichita Falls to Fort Worth?

A. In charge at Wichita Falls:

Q. That is receiving at Wichita Falls?

A. Yes, sir.

Q. How long have you been running on this line between Fort Worth and Austin?

A. Since August 24, 1934.

Q. Since 1934?

A. Yes, sir, August 24th.

Q. That is six years and a half?

A. I think so.

Q. You are pretty well acquainted with the passengers that travel regularly between Fort Worth and Austin?

A. I know quite a few of them.

Q. Are you well acquainted in Fort Worth?

A. Well, I think I am.

Q. Charley, how do you go about handling a drunk passenger?

A. Oh, well, it depends on how they conduct themselves as to how I conduct myself; but there is never an occasion whereby I show any contempt or dislike to their conduct; [fol. 323] I try at all times to keep a smile on my face, and whatever—

Q. Well, from—

A. Pardon me.

Q. How is that?

A. Whatever service that I can render to them I am there doing it with a smile.

Q. Have you ever had a personal difficulty or a fight with a passenger?

A. Not in my natural life, no, sir.

Q. Have you ever tried to order a passenger around, whether he was drinking or not?

A. No, sir.

Q. And tell him what he had to do?

A. No, sir.

Q. Now, from your experience in both porter in charge runs and in runs where you have operated with conductors in charge, I will ask you to state whether you feel that you are pretty well qualified to handle drunk passengers?

A. Well, I can only cite my past record in handling them; from that standpoint I feel that I am.

Mr. Graves: That is all. That is all, gentlemen.

#### Cross-examination.

Questions by Mr. Morgan:

Q. Do you have a good many drunks going out of Austin?

A. No, sir.

Q. Well, do you ever have any?

A. Yes, sir.

[fol. 324] Q. Do you ever have drunks come down there and wake passengers up that have gone to bed early?

A. No, sir.

Q. You mean that has never happened?

A. No, sir, not by me.

Q. At no time?

A. No, sir.

Q. Now, you just bring the car down from Fort Worth to Austin and it is set out here, is that it?

A. That is right.

Q. Then you go back?

A. That is right.

Mr. Morgan: I think that is all.

Mr. Graves: That is all. Thank you.

(Witness excused.)

Mr. Morgan: If Your Honor please, if we could have about five minutes we might be able to stipulate some, if this is going on indefinitely; we might talk to counsel.

Mr. Graves: I believe it would take us less time to finish with this one witness. That is all we have today, and before we bring in any more we might talk about a stipulation.

Mr. Morgan: All right, go ahead.

[fol. 325] NOAH LANE, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Question- by Mr. Graves:

Q. Your name is Noah Lane?

A. Yes, sir.

Q. Where do you live?

A. Dallas, Texas.

Q. How old are you?

A. Fifty-three.

Judge McMillan: How old?

The Witness: Fifty-three.

Q. You operate as a porter in charge for the Pullman Company?

A. Yes, sir.

Q. On the line—

A. 3259.

Q. —running between Dallas and Austin?

A. Yes, sir.

Q. How long have you been on that line, regularly?

A. Since 1931 this time; I have been on the line twice.

Q. Been on the line twice, but continuously now since 1931?

A. Yes, sir.

Q. You know a good many passengers that travel between Dallas and Austin, then?

A. Yes, sir, I know most of them.

Q. That car is in charge here during the same period as [fol. 326] the car—as the Fort Worth car?

A. Yes, sir, the same thing.

Q. That Brown and Thurmond have testified about?

A. Yes, sir.

Q. And you get the porter in charge compensation?

A. Yes, sir.

Q. On that account?

A. Yes, sir.

Q. Where were you born, Noah?

A. Marshall, Harrison County, Texas.

Q. How long have you lived in Dallas?

A. 35 years.

Q. Are you pretty well acquainted in Dallas?

A. Yes, sir.

Q. What church do you belong to?

A. The Goodstreet Baptist Church.

Q. Do you drink?

A. No, sir.

Q. Don't drink at all?

A. No, sir.

Q. What's been your experience with drunk passengers on the train—how have you gotten along with them?

A. I humor them.

Q. You humor them?

A. Yes, sir, and coax them along. I get along with them all right.

Q. Get along with them all right?

[fol. 327] A. Yes, sir, I have at times when they was drunk, and one occasion—it has been a good long time ago, about 13 or 14, if I make no mistake, I had a man that was drunk, and the conductor didn't want to let him on because he was drunk.

Q. You mean the Pullman conductor?

A. The Pullman conductor, yes, sir. I knew the man very well, and I said, "If you will let me have him," he was kinda bad, and I said, "If you will let me handle him we will save trouble for all concerned." Well, he went along and let me alone, and I got him on the car and he wouldn't give up the tickets to the conductor and I said, "If you will just leave him to me I will take care of him;" I said, "I know him and I will take care of him," but I was afraid to let him go to bed because he had two guns on, and I was afraid to let him go to bed with those guns on because he might wake up in his sleep and take a shot at somebody, just for fun in

his sleep, or something, and I coaxed and begged him to let me have his guns, and put them away, and said I would keep them for him until in the morning, and after I persuaded with him for a long time,—“If you will wear them I will let you have them,” he said, and well, you can see my size; he was small, and the belt wouldn’t go around me with the two guns on it, and I wanted to put them in my locker, and he said, “No, you have got to wear them.” I said, “Well, they [fol. 328] won’t meet, the belt won’t meet on me, that’s all.” He said, “Get a string and tie it on,” and so I taken a string off of a linen bag, and I made the belt meet, and fastened the guns on me that way, and he still wouldn’t give his tickets up to the conductor; the conductor was Charlie Darnish, if I make no mistake, that was his name; I said, “If you will just leave him to me—I will get his tickets from him; just leave him alone and leave him to me,” which he did, because he said if he had to come back in the car again, he would have some fun with him. So the conductor stayed outside and so the next morning we were going into Hillsboro and he got up, he just waked up and got up, and I met him and I says, “Mr. Lee,” I says, “are you getting along all right?” He says, “Yes, yes, fine.” I says, “Now, when you have got time I will take your tickets.” I said, “You didn’t give up your tickets last night.” He said, “Didn’t I?” I says, “No, sir.” “I didn’t,” he says, “Why, I don’t know why I didn’t.” I says, “You told me you had done give them to me,” and then he said, “Come on help me find them,” and so he and I looked through his clothes and we found them in his watch-pocket in his vest and he had the Pullman and Railroad tickets, and gave them to the conductor; and, of course, from that time he was all right. You call that trouble, but I call it fun. On Friday night, I had a man here that was down here and he didn’t have his clothes on, and he was unusually loud and I told him, I says, “Please, be [fol. 329] quiet,” I says, “there is a lady here;” He used some pretty bad language and I said, “Please be quiet, a lady will hear you,” and he said, “All right, I won’t say any more;” and I got him to bed; I was about an hour late getting him there; of course, I was fixing to go to bed and I was about an hour late getting him in bed but I finally got him in bed and I seen that everything was all right and he was asleep and he had his pants lying down spreading out in the middle of the floor and I was afraid that his purse

night drop out, so that was why I stayed up to see if he was asleep, and after he was asleep I went to bed, and the next morning he woke up and was all right and didn't know anything about it. Those are the most serious cases I have had with drunks.

Q. Well, you have never had any trouble, then, with drunk passengers that you couldn't handle?

A. No, sir.

Q. Along those lines?

A. No, sir.

Mr. Graves: That is all, gentlemen.

Mr. Lewis: No questions.

Mr. Morgan: No questions.

Mr. Graves: That is all.

(Witness excused.)

[fol. 330] Mr. Graves: If the Court would give us about five minutes I believe it would save time, if Your Honor is going to take a recess this afternoon.

Judge McMillan: It is 3:30.

Judge Sibley: All right.

(Thereupon Court was recessed at 3:30 p. m. until 3:45 p. m.)

J. I. POOLE, a witness produced by the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. What is your name?

A. J. I. Poole.

Q. Where do you live?

A. Smithville, Texas.

Q. Are you employed by the M. K. & T. Railway Company of Texas?

A. Yes, sir.

Q. In what capacity?

A. Trainmaster.

Q. How long have you been in the employ of the M. K. & T. Railroad Company?

A. Between 28 and 29 years.

Q. In what different capacities?

A. I entered the service of the M. K. & T. as a Train Dispatcher [fol. 331] patcher, served in that capacity until 1928, made Yardmaster and served as Yardmaster and promoted to Trainmaster until 1919, and served in that capacity until 1931, reduced from Trainmaster to Chief Dispatcher in 1931, served as Chief Train Dispatcher until 1938, when I was transferred to South Texas as Trainmaster.

Q. State whether it is your duty to see that the rules of the company in respect of the operations of trains are carried out.

A. That is my responsibility, yes, sir.

Q. And part of the territory between San Antonio and Fort Worth, and these Katy trains that have been described here, as being porter in charge lines, is that in your jurisdiction?

A. Between San Antonio and including Waco, is my territory.

Q. So, the train employees and train crews that operate from San Antonio to Waco are under your jurisdiction?

A. Yes, sir.

Q. What does the railroad company do with the view of seeing to it that the rules are actually carried out?

A. Well, there is various things that we do, depending entirely on the case. We continually make checks, that is part of my job, and several others do the same thing; to see that the rules are complied with; and if they are not, to make necessary arrangements to get them complied with.

Q. Do you actually ride the trains for that purpose?

A. Almost continuously.

[fol. 332] Q. Have you got a copy of the rules of the Transportation Department of the Missouri-Kansas & Texas Lines with you?

A. Yes, sir.

Q. I will ask you if that is a copy of the rules that are currently in effect?

A. 1925, Transportation Department, yes sir.

Q. We will offer these rules in evidence, and I would like to ask the witness some questions about them. And then I will turn it over to the Reporter.

(Thereupon said rules were admitted in evidence as Plaintiff's Exhibit No. 15.)

By Mr. Graves:

Q. Mr. Poole, who is in charge of the Passenger trains?

A. A train conductor.

Q. In charge of all trains?

A. Yes, sir.

Q. Is he in charge and command over all of the employees on the train, including the Pullman Company employees?

A. Yes, sir, from the pilot to the tail end of it.

Q. Who, according to the Rules, has authority to eject a passenger from the train?

A. No one except the passenger train conductor.

Q. What rule is it that covers that?

A. 495, I believe you will find it. I will read it for you. 495 is the rule.

Q. Will you read that rule, please, or the portions of that that deal with that?

A. "No train man other than the conductor has authority [fol. 333] under any circumstances to accept anyone as a passenger. No train man other than the conductor has authority to eject a passenger or trespasser from a train, save under the immediate supervision and direction of the conductor." Is that the part you had reference to?

Q. Yes. Now, turn over on the next page and read the paragraph, the second paragraph on page 106.

A. "It is the duty of the conductors and trainmen to attend to the safety and comfort of passengers lawfully on their trains, and to protect them against actual or threatened violence and abusive, profane and obscene language, or conduct, and any passenger guilty of such violence, language or conduct should be ejected from the train."

Mr. Culberson: What page was that on, Mr. Poole?

A. 106.

By Mr. Graves:

Q. What rule requires the employees on the train to report difficulties on the train or anything out of the ordinary to the passenger conductor?

A. Well, the rules, there are two or three rules there—let's see, I will call it off to you.

Q. What about Rule 402. Read that.

A. 402. "All employees, especially those in places of trust, are required to report any misconduct or negligence af-

flecting the interests or safety of the railroad, and withholding such information will be considered proof of negligence or indifference, and treated accordingly."

[fol. 334] Q. What rule is that which prescribes the duties of the conductor in respect of passing through the train?

A. Well, the Rule 507, I believe it is, just offhand. I will look here and see.

Q. Look at 502.

A. 502, I was pretty close to it, I believe. "Unless otherwise instructed, passenger conductors are required to be in attendance on their trains in regular uniform, such time in advance of leaving as prescribed by special instructions, and to remain in attendance in full uniform until they reach the end of their run, discharge their passengers and deliver their trains in proper condition to their successors or yard men. They will be held responsible for the cleanliness, regulated temperature and proper condition of the cars in their trains, and for the prompt action and general good conduct of their baggage men, brakemen, and porters, requiring them to be on duty in regulation uniform, the prescribed time before leaving, and to remain so until the end of their runs, and all of their duties have been performed."

Q. Read Rule 505.

A. "When practicable, conductors must pass through cars occupied by passengers at least once every hour."

Q. And 503.

A. "Passenger conductors must personally give proceed signal from station platform at all points where stops are made."

[fol. 335] Q. Please read 756.

A. 756. "Temperature for cars in service: Coaches in through service 65 to 70 degrees; Pullman sleeping cars between the hours of 10 p.m. and 6 a.m., about 60 degrees; Pullman sleeping and parlor cars in daytime, 65 to 70 degrees. Temperature should be kept below rather than above the highest figure given. Train conductors, at time of taking charge of trains placed in stations, must observe the temperature in each car, and if found underheated or overheated, they must report same promptly, and thermometers in any steel cars register the maximum temperature, as provided for in instructions covering coach equipment, and in the judgment of conductor is not comfortably heated, the maximum temperature may be increased, and report made by the conductor."

Q. Read 507, Mr. Poole.

A. "All trains will be run under the directions of the conductor except when they conflict with the rules, or involve risks, in which the engine man will be held equally responsible."

Q. 495.

A. 495. I believe we read that, didn't we Judge? About the ejecting of passengers?

Q. All right. Do you give instructions to your conductors from time to time?

A. Yes, sir.

Q. The Trainmaster does?

[fol. 336] A. Orally and otherwise, yes, sir.

Q. Does the railroad company make any distinction between the Pullman passengers and passengers on the other part of the train in respect of the service rendered to them by the train crew?

A. No, sir, they are all our passengers and are taken care of accordingly.

Q. Where is the rule that provides that the brakeman will ride on the rear?

A. 443-A, on the Revised Rules. It was issued May 1st, 1939, I believe it is. Let's see. I have the rule somewhere here. April 1st, 1939. 443-A.

Q. Read the last paragraph of that rule, please, sir.

A. "Passenger brakemen or flagmen will, so far as practicable, ride near rear of passenger trains to observe and acknowledge signals, and may, when necessary, ride in lounge cars and observation sleepers, when it can be done without inconvenience to passengers."

Q. Is there any rule that would exempt the train conductor from responsibility for the Pullman cars or the passengers in the Pullman cars?

A. No, absolutely none.

Q. Mr. Poole, are these rules reasonably well complied with?

A. Yes, sir, I say they are.

Q. And it is your business—

A. If they wasn't, I wouldn't be here.

[fol. 337] Q. Do you mean they would get somebody to fill your job?

A. They would get somebody that would.

Q. Are these rules that you have particularly referred to,

and specially referred to here and read, what are known as standard railroad rules?

A. Yes, sir, they are known as standard rules; while not verbatim, they do not read like some of the lines, they are practically the same all the way through. They are known as standard operating train rules.

Q. Do they apply on all railroads in the State of Texas?

A. I would say yes, practically the same. All of the railroads that I know of have what we call the standard rules.

Q. Do you know of any reason why the service rendered on the Pullman cars that are known as these porter in charge runs is inferior in any way to the services on the other cars, other trains?

A. No, sir, the runs where we have those, two runs that I presume that you refer to, between San Antonio, on three and four, they are short runs, and I would say if anything, they would have more attention, but the care is just the same.

Q. All right. That is all, gentlemen.

#### Cross-examination.

##### Questions by Mr. Morgan:

Q. Mr. Poole, according to your contracts between the railroads and the Pullman Company, the Pullman employees are not employees of the railroad, are they?

A. Well, they are not considered so. So far as our trans-[fol. 338] portation rules are concerned, but certainly if there was any misconduct on their part, we would do something about it, if that is what you have reference to. I don't think they get their pay off of our payroll. I don't know how they arrange that part of it.

Q. You assume the same responsibility for passengers in a Pullman as you do passengers in a chair car, is that correct?

A. Yes, sir.

Q. And that Pullman is just as much a part of that train as the chair car is a part of the train?

A. Yes, sir.

Q. The Pullman car is just as much a part of the train as the engine?

A. Yes, sir, it is a part of the train.

Q. And you treat it and operate it as such?

A. Yes.

Q. If a passenger on the Pullman car is boisterous and loud and undresses, and so on, it is the duty of the operator of the Pullman car to have him ejected?

A. If he couldn't be handled any other way. We have lots of things come up that they don't necessarily have to eject the passenger. I will say that there are few of those cases, it — seldom that those cases occur.

Q. As a matter of fact, you don't have a strict compliance with those rules, but what you think as a matter of expedience that may occur on each particular occasion.

A. I don't agree with you. I think the meaning of the [fol. 339] rule is complied with.

Q. I am not going to argue the point, Mr. Poole.

A. I was trying to give you an answer, I beg your pardon.

Q. If a man should do that, he would be in violation of the rule?

A. If he would do what?

Q. If he was loud and boisterous and cursing there, and making a noise.

A. I wouldn't say if he cursed to the extent that it would —if he cursed to the extent that it would be an annoyance to the other passengers, the lady passengers, there are conditions that enter into it. I have heard people use profane language in places where I didn't think it would be considered an annoyance. It would be a matter of handling the condition as it would arise, as to who was present.

Q. You are not employed by the Pullman Company?

A. No, sir.

Q. You are a railroad man, instead of a Pullman employee?

A. Yes, sir, I am employed by the M. K. & T. Railroad.

Q. And I believe you say you are the Trainmaster?

A. Yes, sir, in charge of the Katy operations in this section.

Q. In charge of operations in this section?

A. Yes.

Q. During your many years' experience in that operation, has the railroad ever tried substituting negro men in the place of white conductors?

[fol. 340] A. In charge of the trains, you mean?

Q. Yes.

A. No, they had white conductors when I came to the Katy, and we still have them.

Q. You still have them?

A. Yes, sir.

Q. At any time have you ever tried using a porter in charge of the train instead of the conductor in charge of the train?

A. We have porters on our trains that are very efficient in their particular jobs.

Q. I understand, but have you ever put a porter in charge of your train, and not had a white conductor in charge?

A. No, sir, I have never operated a passenger train with a negro in charge of it, no, sir.

Q. Now, Mr. Poole, isn't it a fact that you—under the laws of this state, that you haul the colored passengers in one section of the train, and the white passengers in another section of the train?

A. Yes, sir.

Q. And do you not obey that law, and is that not a rule you comply with continually in the movement of passengers?

A. Yes, sir.

Q. Isn't it also a fact that the colored passengers are in the front part of the front coach, according to the Jim Crow law, isn't that where they usually ride?

A. Yes, sir, that is the usual practice, depending upon the [fol. 341] make-up of the train.

Q. You don't have any colored passengers in the Pullman car?

A. No, I have known of it happening, but not frequently.

Q. That is all.

(Witness excused.)

H. R. MCKEE, a witness produced by the plaintiffs, having been first duly sworn, testified as follows:

Direct examination:

Questions by Mr. Graves:

Q. What are your initials, Mr. McKee?

A. H. R.

Q. Where do you live?

A. Slaton, Texas.

Q. You are employed by what railroad?

A. By the P. & S. F. Railroad.

Q. That is the Panhandle and Santa Fe?

A. A subsidiary of the Santa Fe Railroad.

Q. That is, then, a part of the Santa Fe system?

A. Yes, sir.

Q. In what capacity are you employed?

A. Division Superintendent.

Q. The part of the Santa Fe System between Clovis and Sweetwater, is that in your Division?

A. It is.

[fol. 342] Q. Are you familiar with the operations of that train that carries a Pullman car from Oakland—I mean from New Orleans to Oakland, California?

A. Yes, sir, quite familiar with it.

Q. It passes through your territory?

A. Yes, sir. It passes through Slaton.

Q. And the train employees on that car are under your supervision?

A. Yes, sir.

Q. I mean on that train?

A. Yes, sir.

Q. Mr. McKee, you heard the rules read by Mr. Poole, who has just testified?

A. Yes, sir.

Q. I will ask you to state whether or not those are substantially the standard Railroad Rules?

A. Those are substantially standard rules, and are in effect on the Santa Fe Railroad, in substance. The wording might be somewhat different, but the meaning is the same.

Q. Does the Santa Fe also regard the passengers on the Pullman cars as railroad passengers?

A. They do.

Q. Does the Santa Fe recognize the responsibility of giving to them the same service that it gives to the passengers on other parts of the train?

A. Yes, sir.

[fol. 343] Q. The conductor with the Santa Fe is also in charge of the entire train?

A. Yes, sir, the conductor, he is the captain of the train, there is no question about that.

Q. Now, you heard Mr. Poole's testimony about the operations of the Katy. I will ask you to state whether the Santa Fe is operated in substantially the same way?

A. Yes, sir, very much the same. I see very little difference, if any. I might say, in the way of observation, that

we make it a point to see whether the rules are observed. We have trainmasters, transportation inspectors that get on these trains out at way stations to find out what is going on, rather than leaving from the terminal, and we think we know pretty well what is going on on our trains.

Q. How long have you been employed by the Santa Fe Railroad?

A. 30 years.

Q. In what different capacities?

A. Superintendent 12 years, Trainmaster 15 years, and Chief Dispatcher and Train Dispatcher, 3 years.

Q. Is it your duty to see that these standard operating rules are performed and are carried out?

A. It is.

Q. Do you think they are?

A. I am certain that they are.

Q. That is all, gentlemen.

[fol. 344] Cross-examination.

Questions by Mr. Morgan:

Q. Mr. McKee, you say you live out in west Texas?

A. Yes, sir.

Q. And you have been with the Santa Fe, the same system for a number of years?

A. Yes, sir.

Q. Have you ever known of the Santa Fe trying to use that plan of substituting train porters in lieu of train conductors?

A. No, that never happened on the Santa Fe.

Q. It never happened on that train?

A. You are talking about train conductors, not Pullman conductors?

Q. Yes, sir, train conductors.

A. No, that never happened on the Santa Fe.

Q. You use only white men for your train conductors?

A. Yes, sir.

Q. You have them in charge of the train?

A. Yes, sir.

Q. They have charge of the engineer and fireman and baggage men and express man; they are all under his general supervision?

A. Yes, sir.

Q. And your Pullman car, when it is tied on to a Santa Fe train, it is an integrated part of the entire train?

A. Yes, sir.

[fol. 345] Q. It is just as much a part of the Santa Fe train as the chair car, or the engine is a part of the train?

A. That is right.

Q. You treat it as such, don't you?

A. Yes, sir.

Q. You treat the passengers as such, don't you?

A. Yes, sir.

Q. You, of course, are familiar with the fact that the railroad companies, not only the Santa Fe, but all other companies, charge an additional fare for passengers that ride in the Pullman cars, over and above the regular fare they would have to pay to chair cars?

A. Yes, sir, that is Pullman fare.

Q. That goes first to the Railroad and the Pullman charges extra fare for the berth?

A. Yes, sir.

Q. Isn't that practice uniform among all railroads in Texas, Mr. McKee?

A. I think so, as far as I know.

Judge Sibley: Mr. McKee, do any of the Texas railroads run their own sleeping cars?

A. Not to my knowledge. I might qualify that by saying I have only been in west Texas about a year and a half. Formerly I was in New Mexico, Kansas and Colorado. My experience in west Texas is only a year and a half, but answering your question; I know of no line that operates independently.

[fol. 346] Mr. Morgan: That is all, Your Honor.

#### Redirect examination.

#### Questions by Mr. Graves:

Q. Do you know about these streamline trains that are operated between Dallas and Houston; that is, daylight trains?

A. No, sir, I have never been over in that territory.

Q. I see.

A. We had streamline trains supervision in New Mexico that ran between Los Angeles and Chicago, but I am not acquainted with the Fort Worth territory.

Q. All right, sir, thank you.

(Witness excused.)

W. J. ROGERS, a witness called by plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Anderson:

Q. State your name.

A. W. J. Rogers.

Q. What is your position?

A. Chairman of the Southwestern Passengers Association, and also publishing agent under power of attorney on file with the Interstate Commerce Commission.

Q. How long have you been so employed?

[fol. 347] A. I have been with the Southwestern Passengers Association almost twenty years. Prior to that time I was with the Missouri, Kansas & Texas for almost thirty years.

Q. In your capacity under power of attorney on file with the Interstate Commerce Commission and the rate regulating authorities of the various states in the Southwest, including the state of Texas, are you familiar with the tariff schedules?

A. Yes, sir.

Q. Do the transportation charges in the state of Texas have nation-wide application?

A. Yes, sir; except as to coach fares, certain territory like the Southeast have a lower rate than we have in the Western territory. Where we have a rate of two cents per mile for transportation and chair cars, they have one and a half cents, except one or two lines in the Southeast that adhere to two cents, the same as the west.

Q. What are the maximum fares prescribed by the Interstate Commerce Commission?

A. For transportation in sleeping or parlor cars, three cents per mile. For transportation in coaches or chair cars in western territory, it is two cents per mile. In the Southeast, it is one and a half cents, and in the East, under passenger rate case 26550, the Interstate Commerce Commission prescribed a rate of three cents in parlor and sleeping

cars, and two cents in coaches. Later, the Eastern lines [fol. 348] made application for an increase, and they were given an increase to two and a half cents per mile on coach travel for an experimental period. That period expired on January 24 of this year, and they got an extension, and later the Interstate Commerce Commission considered their case, and they declined to further extend the two and a half cents; so on March 24, 1940, they will go to two cents per mile, the same as we are.

Q. Has permission been granted by the Interstate Commerce Commission to charge a higher fare in sleeping cars than day coaches?

A. The Interstate Commerce Commission, as I say, set the three cents per mile as the maximum charge for transportation in parlor and sleeping cars, and a lower charge for coaches.

Q. And that applies with regard to interstate business in Texas as well as any other place?

A. Yes, sir; we voluntarily reduced the passenger fares in western territory on December 1, 1933, to three cents for transportation, parlor and sleeping cars, and two cents coaches, we went to the Railroad Commission for the necessary authority to put in the same rate in Texas, and that authority was granted us.

Q. From your knowledge of this order of the Interstate Commerce Commission allowing the higher rail rate for [fol. 349] sleeping cars, do you know whether there is any provision that first-class fares may be charged only when an employee of the rank of Pullman conductor is in charge of the car?

A. No, sir; there is no such provision.

Q. Are you familiar with the order of the Railroad Commission, found on page 79, which provides that no extra fares may be charged or collected by the railroads from passengers for the privilege of occupying Pullman sleeping cars unless facilities, employees, and supervision of employees, and cleanliness of cars is provided while en route?

A. I read that order, yes, sir, and am familiar with it.

Q. Are you aware of and have you made any study of the effect that would have on first-class fares that would result from that part of the order of the Railroad Commission?

A. Yes, sir; I have. In connection with certain of these line cars, as illustrated, we will take the Pullman line car 3010 operating over Gulf Coast line for the Missouri Pacific

between New Orleans and Houston. The current one-way fare applicable to passengers occupying Pullman and passenger cars is \$11.15. The effect of the order would be that a passenger occupying that car could not be charged any more than the three cents per mile fare to the first Texas point; and then the two cents per mile coach fare for the remainder of the distance, which would result in a total charge of \$10.06, or a reduction of \$1.09. Now, in reducing the fare between New Orleans and Houston \$1.09, that means that under Section 4 of the Interstate Commerce [fol. 350] Commission Act, any aggregate of these gateways would have to be taken up, and the rates reduced from other territories. That reduction would extend to Washington, D. C., the entire Southeast, through the New Orleans Gateway, and entirely equalized by other gateways where it is the regular custom of giving the public the benefit of the lowest rate by all routes; and then it would continue on beyond Houston to El Paso and on almost to the Coast. Well, it will probably go to Los Angeles.

Q. What do you mean by the gateway?

A. I mean this,—if the fare from Atlanta, Georgia, over to New Orleans would be equalized by Memphis, Tennessee, for example, to say, El Paso and points west by Memphis and Kansas City. And as you go further east, when you get to Washington, they would be equalized by the upper gateways, such as Chicago and St. Louis, and then the authorized route from there, which would be the ordinary route by which they carry the short-line fares from those gateways. Another case, we have a Pullman line 3370 between Memphis, Tennessee, and Dallas over the St. Louis and Southwestern. The first-class fare there is \$14.04 between Memphis and Dallas. The combination fare over the Texas border, using the first-class fare to Texarkana, and the interstate coach fare of \$3.71, would result in a through rate of [fol. 351] \$12.19, making a difference of \$1.85, so you have a loss of \$1.85 that carries on to the east, and the territory affected would be Washington, New York, Philadelphia, and New England territory to Dallas and to points beyond, El Paso, and all the way to the coast. In fact, it would take out in almost every instance \$1.85 from that vast territory from coast to coast. Maybe in one or two instances, where the combination might run a little lower, like between New York

and Los Angeles, the difference would only be 69 cents. That is due to the fare construction by other gateways.

Q. Do you have any other examples?

A. Well, we have now on that schedule—on that line 3251 you have an entirely different situation between St. Louis and Waco. The combination over Denison would result in lowering that fare to \$21.21, a difference of \$1.35. When you cut St. Louis to Waco, it also cuts the territory north of St. Louis and the territory south of Waco. It reduces the fare. And Fort Worth to St. Louis, in the opposite direction, that same line car where you have from Fort Worth north-bound, you would have a rate made up by using the interstate Fort Worth to Denison, and then the first class rate, making \$19.43, as against the Fort Worth-St. Louis rate of \$20.29. The difference is 96 cents. At Kansas City you have a peculiar situation in regard to line car, Kansas City to San Antonio, known as line 3265. The one-way first-class fare for transportation, parlor and sleeping car, is [fol. 352] \$23.19. It is the same in each direction; but south-bound the combination there over Waco results in lowering the rate by \$1.87. North-bound, on account of the situation being a little different, the car being in charge of the porter all the way to Fort Worth, the difference is \$2.77. In that particular case, the chances are that the railroad would use their lowest rate in both directions, because it would be hard to separate as between the two.

Q. Now, going back to this line 3010 from New Orleans to Houston, with particular reference to the portion to Houston from the Sabine River, isn't there a competing railroad that runs almost parallel to that?

A. Yes, sir.

Q. What railroad is that?

A. The Southern Pacific.

Q. And the Sunset Limited runs on that road?

A. Yes, sir.

Q. If there is a reduction made on the Missouri Pacific line between the Sabine River and Houston, wouldn't the Southern Pacific immediately reduce their rate?

A. Yes, sir; they would.

Q. They would meet the rate?

A. Yes, sir; the two lines carry the same fare. They carry the lowest combination there between those points, and that is the fare over both routes.

Q. And aren't there other lines that run parallel in the state of Texas where the same condition would exist?

[fol. 353] A. Yes, sir; between Memphis and Dallas, the Missouri Pacific operates a car by Texarkana over the Texas Pacific. They would be obliged to meet the conditions created by the car over the Cotton Belt.

Q. How about the M. K. & T. and Missouri Pacific from Fort Worth or Dallas down here to San Antonio?

A. You would have the same condition there where there are these other competing lines,—like take out of Fort Worth to San Antonio, the I. & G. N. have a car there, and they would have to meet it.

Q. If you can ride for two cents a mile, or approximafely that, in a Pullman car on the train where there is only a Pullman porter on the Pullman car, and the competing line would meet that rate on a train where they carried a Pullman conductor, wouldn't that, in turn, make the first railroad reduce to where their trains would carry that?

A. It would do that. The Katy is a fair example between Kansas City and San Antonio.

Mr. Morgan: We object to that. It is wholly speculative,—what one railroad might do or another one might do.

Mr. Anderson: I withdraw the question. That is all.

#### Cross-examination.

##### Questions by Mr. Morgan:

Q. Mr. Rogers, to ride in a chair car in Texas, a passenger is required to pay two cents a mile?

[fol. 354] A. That is the coach rate.

Q. Then if that same passenger desires to ride on the Pullman, he is required to pay to the railroad company an additional one cent per mile?

A. He pays three cents per mile. The difference happens to be one cent, yes, sir.

Q. He pays three cents a mile, then?

A. Well, in Texas, of course, the statute rate is three cents a mile. The Railroad Commission, on their own initiative, reduced the coach fare to two cents a mile.

Q. They made application to the Railroad Commission for the reduction?

A. They made application to the Railroad Commission, which they are obliged to do, whether it is an increase or a reduction that is sought.

Q. Now, then, they could make application, if they so desired, to change their rate to conform to this order, couldn't they?

A. They can make an application to the Railroad Commission to make any rate they saw fit to make.

Q. Or they could just go ahead and comply with this order too, couldn't they, by simply having the Pullman Company furnish the Pullman conductor?

A. I could not answer that. That is an operating matter. I could not speak on an operating matter.

Q. You were speaking about those various rates and costs [fol. 355] there. Can you tell us whether or not it would not be cheaper for the railroads to require the Pullman Company to just go ahead and comply with this order?

A. I could not say about that.

Q. I will ask you this question, Mr. Rogers. You do know of your own knowledge that the railroads have not attempted yet to comply with this order, don't you?

A. Yes, sir.

Q. And you do know the figures you have given and results that those statistics show, that you gave, are purely hypothetical, aren't they?

A. The effect of compliance with the order would result in these amounts.

Q. But so far as number of passengers who might ride on the train if they had a porter where they could ride for two cents, or a conductor in charge where they could ride for three cents, that is an untried matter about which neither you nor I would know what the public would do?

A. We really know what the public would do in time. They usually take advantage of the lowest possible rate for whatever class of service they are obtaining; we know that. That is a demonstrated thing.

Mr. Morgan: That is all.

[fol. 356] Redirect examination.

Questions by Mr. Anderson:

Q. Have the rail rates always been under the authority of the Texas Railroad Commission?

A. Yes, sir.

Q. Wasn't there an order of the Interstate Commerce Commission in effect for a good many years which made these rate orders void?

A. When the Interstate Commerce Commission increased passenger rates in August, 1920, by 20 per cent, it raised the passenger fare from three to 3.6 cents per mile. The statute rate in the state of Texas was 3 cents per mile, and by reason of the fact there was a statute rate, that estopped the roads from raising the rate intrastate in Texas until we secured the necessary 13 section order, and after the level was increased in Texas eliminating the burden on interstate traffic.

Q. You spoke of Interstate Commerce Commission allowing a charge of 3 cents rail rate in Pullman cars. Didn't the Interstate Commerce Commission indicate approval of this 3 cents rate in Pullman cars because of the smaller number of passengers carried?

Mr. Morgan: We object to the question as to why the Interstate Commerce Commission did something. What motivated them is certainly not material.

Judge Sibley: I presume what they said would be proof of [fol. 357] that. I think your objection is good.

Mr. Anderson: I believe that is all.

(Witness excused.)

A. C. JACKSON, a witness called by plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Anderson:

Q. State your name.

A. A. C. Jackson.

Q. State your business.

A. Assistant general passenger agent, Missouri Pacific.

Q. How long have you been so employed?

A. Seven years in that capacity.

Q. Where is your home?

A. Houston.

Q. How long have you lived in Texas?

A. Since 1907.

Q. You heard Mr. Rogers testify that there would be \$1.09 difference in an interstate rate where this particular part of the order having to do with the rate structure provides that no extra charge shall be made where the car is manned only by a Pullman porter?

A. Yes, sir.

Q. That train has how many cars on it, Mr. Jackson? I [fol. 358] am referring to line 3010.

A. Four passenger-carrying cars.

Q. How many Pullman cars?

A. One.

Q. Is that a heavy or light line? Do you know anything about the passengers that are carried in that Pullman car?

A. In a general way, it is a local train—principally a local train.

Q. It makes a lot of stops?

A. Yes, sir.

Q. There is another road that runs parallel to your road from the Sabine River to Houston?

A. Yes, sir.

Q. That is the Southern Pacific?

A. Yes, sir; that is correct.

Q. If you comply with this order by charging a coach rate on this train that carries one Pullman car in charge of a porter, what do you think the Southern Pacific is going to do about that?

A. Competitive conditions would answer that. They would immediately meet our charge.

Mr. Anderson: I think that is all.

[fol. 359] Cross-examination.

Questions by Mr. Culberson:

Q. Mr. Jackson, the questions that have been asked are whether the observance of this first provision of the order would have those effects upon the rates; that is to say, that part of the order which says that the rate shall not be charged unless the Railroad, in effect, compelled the Pullman Company to keep the conductors on the train?

A. That is substantially the order.

Q. If the railroad compelled the Pullman Company to live up to its contract, then you would not have that situation about the rate increase?

A. I don't know that the railroad can compel the Pullman Company to do that.

Q. Let's assume that they could do it.

A. I can't assume that.

Q. The order about which he interrogates you says that they shall not charge a rate unless Pullman conductors are furnished or unless supervision is furnished in accordance with the contract, and all of his questions assumed that you are going to observe that order?

A. Yes, sir; to avoid the penalty.

Q. Let's assume that you have a right to enforce it. Now, assuming the same things he did, and assuming that you do have the right to compel the Pullman Company to [fol. 360] perform the services which the Railroad Commission says it contracted to furnish,—that is, to keep supervision on these Pullmans, then you would not have this question of losing this revenue, would you?

A. First, let me say that I am not familiar enough with the contract to say whether that assumption can be had—whether the railroad company can compel the Pullman Company.

Q. The whole question is hypothetical on that assumption.

A. I answered his question on the basis, assuming we would be made to comply with the order of the Railroad Commission.

Q. He was interrogating you about the first order, I believe—which one was that?

Mr. Anderson: Page 79.

Q. He was interrogating you about this provision of the order,—“It is further ordered, adjudged, and decreed, that no extra fare shall be charged or collected by the railroad from the passenger for the privilege of occupying Pullman sleeping cars unless facilities and employees and supervision of the work of employees and the cleanliness of the cars is provided while the cars are en route, or as provided by the terms of the respective contracts with the Pullman Company, are fully complied with.” He asked the previous witnesses what effect it would have on the revenues of the railroad if you were compelled to comply [fol. 361] with that provision of the order, and the testimony of the previous witness was that \$1.09 example. Now,

then, your answer is hypotheticated upon the assumption you could enforce that contract, and that it means what the Railroad Commission says. Now, I am asking you to make the same assumption and tell this Court if the same result will be had if you compel them to keep the conductors on the train.

A. I am not familiar with the contract.

Q. You are not familiar with the contract?

A. No, sir.

Mr. Graves: We can shorten this by admitting that if the Pullman Company put the conductors on the trains, this provision in respect to rates has no application.

Mr. Culbertson: That is all.

(Witness excused.)

[fol. 362] J. M. VONAU, JR., a witness called by plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is J. M. Vonau, Jr.?

A. Yes, sir; that is correct.

Q. Where is your home?

A. Houston, Texas.

Q. You are in the employ of what railroad company?

A. Southern Pacific,—the Texas & New Orleans Company, commonly known as the Southern Pacific.

Q. How long have you been in the employ of the Southern Pacific Railroad Company?

A. Twenty-three years.

Q. What is your present status with the company?

A. My present title is assistant general passenger agent, specifically in charge of rates and tariffs.

Q. Are you familiar with the operations of the trains and the make-up of the trains of the T. & N. O. or Southern Pacific in the State of Texas?

A. Yes, sir; I am familiar in a general way, but as I stated, my specific duties are in connection with rates and tariffs.

Q. Does the Southern Pacific system have a train known as the Streamline train operating between Dallas and Houston?

A. Yes, sir.

Q. Is the train made up entirely of modern cars built on the streamline type?

A. Exactly.

Q. How many cars does the train carry?

A. The train carries five cars.

Q. What is the name of those trains?

[fol. 363] A. We have one that is operated as a non-stop in the evening,—the Sunbeam; and then a train in the morning with similar equipment that operates on a slightly slower schedule, known as the Hustler.

Q. Those trains make a round trip a day between Dallas and Houston?

A. That is right.

Q. What is the consist of the train?

A. Well, the Sunbeam non-stop train in the evening has three coaches, a parlor, and a diner, lounge, observation car.

Q. That diner, lounge, observation car is one car?

A. That is correct.

Q. So that it has five passenger-carrying cars?

A. That is correct.

Q. And how many head end cars?

A. One head end car—baggage car.

Q. A baggage car and five passenger-carrying cars?

A. Yes, sir.

Q. Does the railroad company own all of the cars in the train?

A. Yes, sir; it is railroad company equipment, so far as I know.

Q. So there are no Pullman cars on the train?

A. No, sir.

Q. Now, does the railroad company charge the first-class railroad fare to passengers riding in the parlor car?

A. Yes, sir; we charge three cents a mile, or a rate base of three cents a mile in the parlor car.

Q. In other words, you charge the rate for riding in that parlor car that you charge on the Sunset Limited for riding in the Pullman cars on the Sunset Limited?

[fol. 364] A. That is right.

Q. Now, in addition to that, do you charge a seat fare?

A. Yes; we charge a seat fare. From Dallas to Houston, that seat fare is \$1.05.

Q. So that you make a charge that is equivalent to the first-class railroad rate, and then you make an extra charge

as the Pullman Company would make if that parlor car were owned and operated by the Pullman Company?

A. Yes, sir; and that is for extra advantages that that particular type of travel affords. For example, each passenger has a particular reserved seat, and also the use of that lounge observation car, and that has radio facilities and current magazines, and so forth,—a service over and above what the passenger gets who rides at the lower rate in the coaches or other cars.

Q. Just as the passengers in the Pullman car have separate seats assigned to them?

A. Yes, sir; they have space reserved in a Pullman car or parlor car. Each passenger is assigned a specific seat, and it is protected by the porter in charge, as I understand it, and their baggage and so forth is protected, and it is no question of having to sit in your seat all of the time to keep it. If you get up and then come back later that seat is still available to you.

Q. Who built those cars?

A. The name?

Q. Yes sir.

A. The Pullman Company as I understand it.

Q. They were built by the Standard Pullman Car Manufacturing Company?

[fol. 365] A. Yes, sir.

Q. The same company that builds the Pullman cars?

A. Yes, sir.

Q. Do you have an attendant on that parlor car?

A. Yes, sir; we have a special attendant in charge of that parlor car.

Q. Is he a colored man?

A. Yes, sir; so far as I know.

Q. Do you have also an extra conductor in charge of that car?

A. No; we have a train conductor in charge of the whole train.

Q. Now, you have passengers riding in a car, for which you get the first class railroad fare, and then for which you charge an extra charge for the seat in that parlor car, and yet you don't have a parlor car conductor, do you?

A. That is correct; we don't have a second conductor. We have a train conductor who has charge of the whole train, and he collects the transportation. Now, in that particular car the porter does not collect the transportation.

Our conductor collects the railroad transportation, and receipts their ticket, or if the passenger does not have the seat fare ticket he collects the seat fare charge.

Q. Have you had any trouble from the attendant in that car mistreating or insulting any of your passengers?

A. Not that I know of.

Q. If any of the passengers on the car had been insulted or assaulted you would know about it?

A. I think I would, because I am in the passenger service department and naturally when a criticism or complaint arrives it comes to the passenger service department, and [fol. 366] we try to keep informed of what is going on, and I have not heard of any trouble in that respect.

Q. Are there any other railroads that have such trains as that in Texas—trains that compete with the Sunbeam and—

A. Yes, sir, there is the Zephyr train of the B. & R. I., that operates between Houston and Dallas.

Q. Do they have this modern streamlined equipment, too?

A. Yes, sir, so far as I know. I have never ridden them, but I have seen them, and I understand that is the kind of trains they are.

Q. Do you know whether they charge an extra fare for riding in their parlor cars?

A. Their fares and charges are identical with ours.

Q. What railroad is it that operates the Zephyr?

A. The Burlington & Rock Island.

Q. Are those the only streamlined trains that you know of in Texas?

A. Yes.

Judge McMillan: The Burlington Railroad is not chartered in the State of Texas, is it? They have some connection with some other railroad, don't they?

A. That line is owned jointly.

Judge Allred: The Burlington does not come into Texas, does it?

Mr. Graves: It is operated by the Rock Island.

Judge McMillan: The Burlington is not a party to this suit, is it?

Mr. Graves: No, sir.

Judge McMillan: I don't think it is material then.

Q. Mr. Vonau, the Southern Pacific operates through trains between New Orleans and San Francisco and be-

[fol. 367] tween New Orleans and Los Angeles, and I understand you operate a train known as the Sunset Limited between New Orleans and San Francisco, and another train known as the Argonaut between New Orleans and Los Angeles?

A. Yes, sir; those are daily transcontinental trains.

Q. What special service do those trains render in the service of attendants that are not carried on the regular trains?

A. In each train we operate a lounge car for the benefit of standard sleeping car passenger, which offers barber service, valet service, shower baths, radio, free magazines, and so forth.

Q. Do each of those trains carry a number of Pullman cars?

A. Yes, sir, they do.

Q. They have one train conductor to each of the trains?

A. Yes.

Q. And one Pullman conductor?

A. That is correct.

Q. And a Pullman porter on each car?

A. That is correct.

Q. Now, then, if this train that operates between New Orleans and Oakland, California, that parallels the Southern Pacific line between New Orleans and Houston should reduce the railroad fare for passengers riding in this Pullman car, what would the Southern Pacific do in respect of the railroad fares for passengers riding on the Southern Pacific trains between New Orleans and Houston?

A. Well, immediately—

Mr. Lewis: We object to that as wholly speculative, something beyond his power or control.

Judge Sibley: I can guess, we can all guess from our [fol. 368] knowledge of how railroads operate; but it doesn't seem to me that it has to do with what we have to decide here.

Mr. Graves: I am not sure that it is an essential fact at all.

Judge Sibley: As I understand you, you say the Commission did not give you any notice of a rate hearing to begin with, and that part of the order goes out on that ground.

Mr. Graves: Yes, sir.

Judge Sibley: If you are wrong about this and it was within their power to make a new class rate—that is, two cents a mile—and they have a right to do it, they can do it.

Mr. Graves: If it was not unreasonable and arbitrary, but we would still have a right to complain about it in such an action as this.

Judge McMillan: Does this order say that the rate shall be two cents a mile in the event there is no conductor; or does it say unless you comply with the contract it will be two cents a mile, and then goes on to construe the contract? It was a sort of round about way to get at it.

Mr. Graves: That is right, but we take it that none of the plaintiffs would be willing to run the risk of a penalty if that phase of the order should be applicable and should stand. They would not run the risk of the penalty for violating it.

Judge Sibley: If you were to change your contract it would knock that part of the thing out, it looks like.

Judge McMillan: Is there anything in your contract to require you to have a Pullman conductor?

Mr. Graves: No, sir.

[fol. 369] Judge McMillan: That is simply the Railroad Commission's construction of it.

Mr. Graves: Yes, sir.

Judge McMillan: To get back to your original question of whether or not other railroads would compete or not, how would that illustrate the power of the Commission or the reasonableness of what it did?

Mr. Graves: We think it would be a circumstance to show it would be an unreasonable provision or requirement.

Judge McMillan: Any change they made in Texas rates would be the same thing. You would cut them off from changing a rate.

Mr. Graves: It would affect interstate rates inevitably also. We don't care to pursue it any further.

Judge Sibley: It would constitute discrimination between railroads, because one might be complying with the Pullman conductor proposition, and if the other was not, it would require them to lower their rates to meet the competition.

Mr. Graves: I think it would. This is the last question we had to ask this witness.

Q. Did you answer the question?

A. Will you state the question once more, please, sir? As I recall it, you asked me if the Southern Pacific would feel compelled to meet the reduction in rates caused by the non-conductor operation on a competing line between New Orleans and Houston.

Q. That is right.

A. I would answer that, following rate policies and the policies that the railroads have followed for twenty years [fol. 370] or more, I would say yes, without qualification; and that would have to be made effective or we would make every effort to make it effective simultaneously with the line that reduced the rate.

Mr. Graves: That is all.

#### Cross-examination.

##### Questions by Mr. Morgan:

Q. Are you familiar with the fares that are charged by your train going from Houston to Dallas and return?

A. Yes, sir.

Q. How much is that fare?

A. Well, it depends in which equipment you would want to travel.

Q. Let us say in the chair car.

A. We have a special rate of \$4.00,—a one way coach fare. That is in what we call a chair car coach.

Q. Is that one way or round trip?

A. That is one way.

Q. What is the round trip charge?

A. The round trip is \$6.00.

Q. What is the distance from Houston to Dallas?

A. On our railroad it is 263 miles.

Q. Do you know the fare that is charged on the Zephyr, to which the gentleman referred awhile ago, from Dallas to Houston and return?

A. The fares are identical.

Q. Do you know that the same fare is charged from Fort Worth to Houston and return?

A. Yes, sir.

Q. Do you know that from Waxahachie, Texas, to Hous-[fol. 371] ton and back it is identically the same fare?

A. I think it is.

Q. You have three points of origin, either Fort Worth, Dallas, or Waxahachie, to Houston and return, and it is identically the same fare, isn't it?

A. Yes, sir.

Q. And from Fort Worth to Houston, is a distance in excess of 300 miles, isn't it?

A. On our railroad it is 285 miles.

Q. All right. Then you do have in that particular instance special concessions as to rates?

A. Well, that \$4.00 rate we have is an experimental rate. We put it in last April on special authority from the Railroad Commission to meet highway competition,—that is the rate charged by the bus lines and we are trying to recapture some of our business from the highway.

Q. And in order to meet bus competition you are charging from Waxahachie, Dallas and Fort Worth the same round trip rate the buses are charging?

A. We are charging from Dallas—the fact it is the same in Fort Worth is caused by the physical condition of other lines. We did not put the rate of \$6.00 in to Fort Worth. It was brought in by other lines.

Q. But you now have that rate?

A. Naturally we would meet the condition.

Q. If one wanted to ride your train from Fort Worth to Houston they would only have to pay \$6.00 for a round trip in a chair car?

A. Yes, sir.

[fol. 372] Q. Therefore you are charging just a fraction more than a cent a mile for travel on that round trip, aren't you?

A. Well, to Fort Worth it is about one and a half cents a mile. Between Houston and Dallas it is a little more than one and a half cents a mile by taking the shortest line, and that is the way rates are made. The rate would be \$3.70 on one and a half cent basis per mile, so you see it would be about one and three-quarters cents.

Q. Which company made a special request of the Railroad Commission as it applied to that particular operation?

A. Our company did not make the special request. This is a rate that all the railroads operating between Dallas and Fort Worth and Houston attempted to test out. Mr. Rogers made that application in behalf of all the railroads interested in that traffic.

Q. Do you know whether, of your own knowledge, your railroad has made application for an exemption as to the operation of the order in question as it relates to this specific train or any other train of your company?

A. I can't answer that question.

Q. Do you know?

A. No, sir, I do not.

Mr. Morgan: I think that is all.

Judge Sibley: We will recess until nine o'clock in the morning.

(The Court then, at 5:05 o'clock p. m., Monday, February 19, 1940, recessed until 9:00 o'clock a. m., Tuesday, February 20, 1940, at which time the following proceedings were had:)

[fol. 373]            Tuesday, February 20, 1940

Morning Session: 9:00 o'clock

M. P. STRICKLAND, a witness for the plaintiffs, was sworn and testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name, sir, is M. P. Strickland?

A. Correct.

Q. You live in San Antonio?

A. I do.

Q. You are president of the Stowers Furniture Company?

A. I am.

Q. How long have you lived in San Antonio?

A. Off and on for forty-six years.

Q. Have you had occasion to travel frequently or infrequently on railroad trains and on Pullman cars in recent years?

A. Yes.

Q. Frequently?

A. Frequently, yes.

Q. What has been your impression, Mr. Strickland, of the service rendered on trains by Pullman porters?

A. Satisfactory.

Q. Have you ridden on trains to which the Pullman car was accompanied by a Pullman porter but not a Pullman conductor?

A. I have.

Q. Have you noticed any difference in the quality of service on those cars?

A. None.

[fol. 374] Q. From the others?

A. No, sir.

Q. I will ask you to state whether you would have any hesitancy in permitting members of your family to travel on cars that were in charge of the Pullman porter and where there was no Pullman conductor present?

A. I would not.

Q. Where were you born?

A. I was born in Douglas County, Georgia, Lithia Springs.

#### Cross-examination.

Questions by Mr. Lewis:

Q. Mr. Strickland, does it make any difference to you whether the train conductor ever goes into that Pullman car or not?

A. Not any particular difference. All he does is take up your ticket.

Q. If your wife were traveling by herself would it make any difference to you whether the train conductor ever went in that car or not?

A. It would not.

Q. Regardless of whether there was a Pullman conductor in there?

A. No.

Q. Do you have any daughters?

A. No. I have a son ten years of age.

Q. Ten years of age?

A. Yes, sir.

Q. Would you prefer to put him in charge of a Pullman porter rather than a Pullman conductor?

A. I don't think he would be in charge of either the Pullman porter or the conductor if he were riding in the car.

[fol. 375] Q. If you put him in the car by himself would you prefer that there be a Pullman conductor there?

A. Well, I think perhaps I would prefer that there would be a Pullman conductor.

Q. Why?

A. Well, I think that he would perhaps give him a little more attention. The Pullman porter has other duties, and perhaps he would give him a little more attention than the conductor—than the porter.

Q. And under many circumstances you would simply rather have the Pullman conductor there?

A. I can't say that I would.

Q. In case of disturbance you would, wouldn't you?

A. What do you mean by disturbance?

Q. In the case of disturbance among other passengers you would feel lots better if there were a Pullman conductor back there, wouldn't you, if your little boy was riding in there?

A. I have never been on a train when there was a disturbance.

Q. In the event of disturbance you would prefer that there be a Pullman conductor back there?

A. If there was not a Pullman conductor there would be a train conductor back there.

Q. In the car?

A. I don't know that—I—I think that perhaps he would be protected if there wasn't a Pullman conductor there, there would be other white men on the train probably. I seldom ride on a train when there are not other passengers, and usually the class of passenger that rides in the Pullman is a little better than that that would be on the chair car, perhaps.

[fol. 376] Redirect examination.

Questions by Mr. Graves:

Q. What is your recollection as to how many Pullman cars there are on the train where there is only a Pullman porter there and no Pullman conductor?

A. Usually one Pullman car only. My experience has been between San Antonio and Laredo. I have ridden on that train when it was in charge of a porter.

Q. What has been your experience as to whether or not the brakeman usually rides in that car?

A. The brakeman usually rides in the car. He is in and out of the car.

(Witness excused.)

WILLIAM C. CLEGG, called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is William C. Clegg?

A. Yes, sir.

Q. You are a resident of San Antonio?

A. Yes, sir.

Q. A native of San Antonio?

A. Yes, sir.

Q. You are connected with the Clegg Company there?

A. Yes, sir.

Q. Mr. Clegg, have you had occasion to travel frequently in recent years?

A. Yes, sir.

[fol. 377]. Q. On Pullman cars?

A. Yes, sir.

Q. What has been your experience and observation as to the service rendered on Pullman cars by the Pullman porters?

A. The very best so far as I know. I have never been inconvenienced any and I have been very comfortable.

Q. Have you traveled on cars where the Pullman car was in charge of the Pullman porter and there was no Pullman conductor present?

A. I may have. I don't recollect any particular case of that sort.

Q. Have you ever seen any case of mistreatment or discourtesy to passengers by a Pullman porter?

A. No, sir, I don't recollect any.

Cross-examination.

Questions by Mr. Lewis:

Q. Mr. Clegg, the Pullman porter shines your shoes at night, does he?

A. Yes, sir.

Q. And he makes up your bed?

A. Yes, sir.

Q. And he sweeps out the car?

A. Yes, sir.

Q. And does other menial tasks around in the car?

A. Yes, sir.

Q. If you were sending your wife on a trip or one of your children you would prefer to have another man in executive charge of that car rather than the fellow that does the menial tasks, wouldn't you?

[fol. 378] A. You mean for a long trip or a short trip?

Q. Well, first say a long trip.

A. I would think so.

Q. And correspondingly for a short trip, wouldn't you?

A. Well, it never occurred to me. I never weighed it any. I guess so, yes, sir.

Q. You would feel just a little bit safer with your family in there with a white man conductor in charge of that car rather than in charge of a man who does those menial tasks, wouldn't you?

A. Yes, sir.

(Witness excused.)

C. A. GOETH, a witness for the plaintiffs, having been first duly sworn, testified as follows:

#### Direct examination.

##### Questions by Mr. Graves:

Q. Your name is C. A. Goeth?

A. Yes, sir.

Q. You are a resident of San Antonio?

A. Yes, sir.

Q. You are an attorney by profession?

A. Yes, sir.

Q. Mr. Goeth, how long have you lived in San Antonio?

A. About fifty years.

Q. Are you a native Texan?

A. Yes, sir.

Q. Mr. Goeth, have you had occasion to travel frequently in recent years on trains and on Pullman cars?

[fol. 379] A. I have.

Q. Have you observed the quality of service rendered by the porters on the Pullman cars?

A. Yes, sir, I have.

Q. Will you state whether it has been satisfactory or unsatisfactory from the standpoint of the passenger?

A. Very satisfactory.

Q. Do you recall whether you have ridden on Pullman cars that were in charge of a Pullman porter and where there was no conductor present?

A. Yes, sir.

Q. Have you noticed any difference in the quality of service rendered by the Pullman Company?

A. I have not.

Q. To the passengers under those circumstances?

A. I have not.

#### Cross-examination.

##### Questions by Mr. Lewis:

Q. Mr. Goeth, if you were to go into a small, nice looking hotel and found that the porter was also in charge of that little hotel you would leave, wouldn't you?

A. That situation has never occurred to me. I can't say whether I would or not.

Q. It is contrary to human nature that it should be a successful operation to place executive duties, or to place a man in charge who also performs the menial tasks of shining your shoes and making your beds, isn't it?

A. It would be in some circumstances, yes, sir.

Q. When you go on a trip you purchase a Pullman ticket. Where do you buy that ticket as a general rule?

A. At the city office.

[fol. 380] Q. At the city office?

A. In San Antonio, yes, sir.

Q. Do you have any particular reason for buying it there rather than waiting to get it on the train? Is it just a matter of convenience?

A. A matter of convenience, yes, sir.

Q. The porters whom you find on the Pullman cars, do you think they would be satisfactory, transferred from those duties to that of selling the tickets?

A. Having the porter sell me the ticket?

Q. Yes, sir.

A. I don't think that would disturb me.

Q. To have him transferred to the town office where you buy your ticket?

A. That has never occurred to me. I don't know that that has ever happened. So far as I know, I don't think it has ever happened.

Q. What is the personnel of your family, how many children?

A. Two.

Q. Boys or girls?

A. Boys.

Q. Do you have any grandchildren?

A. Yes, sir.

Q. Boys or girls?

A. Two boys and one girl.

Q. In the case of a trip of say eight or ten hours and you were going to place your granddaughter or your other two grandchildren on the Pullman car, would you feel better about it if that car was in charge of a Pullman conductor rather than merely of a porter?

[fol. 381] A. I would not have the slightest concern if it were only in charge of a porter.

Q. Would you depend somewhat on the train conductor in that feeling?

A. I would not.

(Witness excused.)

Judge Sibley: Is there any need of multiplying these witnesses, gentlemen? We have all ridden on Pullmans, and we know that no number of witnesses is going to change our ideas of what is going to happen, unless there might be some extraordinary circumstances.

Mr. Graves: We will defer to the Court's wishes, then, Your Honor.

E. P. Burke, a witness for the plaintiffs, was sworn, and testified as follows:

Direct examination.

Questions by Mr. Graves:

Q. Your name is E. P. Burke?

A. It is.

Q. What position do you hold with the Pullman Company?

A. Passenger traffic manager.

Q. How long have you been with the Pullman Company?

A. I have been with them for forty years.

Q. Do you know whether the Pullman Company has private cars?

A. They have.

Q. It has a number of private cars that it furnishes on [fol. 382] occasions when required?

A. They do, sir.

Q. Now, the rates for the use of the private cars, how is that determined?

A. They are part of the tariff on file with the United States Interstate Commerce Commission.

Q. Does the tariff for the use of those cars contemplate the furnishing of a conductor with the car?

A. It does not. The tariff provides that a cook and two attendants will be supplied.

Q. Who for the Pullman Company files the tariff with the Interstate Commerce Commission?

A. I do.

Judge Sibley: Are these private cars sleeping cars?

A. They are, sir, and they also have living facilities, rooms, meals, those facilities.

Judge Sibley: This order mentioned sleeping cars.

A. A private car in addition to having facilities for sleeping purposes, having rooms, has an observation lounge, dining room and cooking facilities. In fact, it is a complete living unit.

Q. Now, then, as a matter of practice do you actually furnish a conductor with those cars when you furnish them?

A. We do not.

Q. Do they operate on trains where the other Pullman car or cars are in charge of Pullman conductors?

A. Frequently they are and frequently they are located in [fol. 383] those trains ahead of the other cars, separated from the other cars so that there will be no disturbance of the occupants of the private cars.

Q. If they are located on a train where there is a Pullman conductor does the Pullman conductor have any supervision over that car, the private car?

A. He has none. There is no occasion for it.

Q. And if they are in a train where the Pullman porter is in charge of the one Pullman car on that train, I am speaking of the regular equipment.

A. Yes, sir.

Q. Does the Pullman porter who is in charge of the regular Pullman car have any jurisdiction over the private car?

A. He would have none.

Q. Is that a copy of the tariff that you speak of?

A. These are pages of the tariff that govern the private car rates of the Southwestern section of the country.

Q. Give us the short name of the tariff?

A. Southwestern section rate book, tariff, I. C. C. No. A-12.

Mr. Graves: We offer this in evidence.

Mr. Lewis: If the Court please, may we ask this witness a question with reference to this to see whether it is admissible or not?

Judge Sibley: Yes, sir.

Voir Dire by Mr. Lewis:

Q. Are the cars that you are speaking of known as sleeping cars or included in sleeping cars, when you speak of sleeping cars?

A. They are known as private cars. They contain sleeping [fol. 384] car facilities and as such would be a part of the sleeping car facilities of the Pullman Company.

Q. When you mention sleeping cars would it include these cars?

A. I would say it does because they have sleeping facilities and they are a part of the Pullman Company equipment and the rates are governed by the tariff.

Questions by Mr. Graves (resumed):

Q. Are these cars operated in Texas as well as out of Texas?

A. There have been movements of those cars in Texas. I understand that in one year there were eleven such movements either into, out of, or through the State of Texas.

Judge McMillan: Where do these three employes sleep on this private car?

A. There is a small head-end section where they live and where they prepare the meals.

Judge McMillan: If you put a conductor on would there be a place for him to sleep?

A. No, sir. They are very limited quarters, naturally, with the idea of giving as much space as possible to the party chartering the equipment.

Judge McMillan: Who lifts that transportation for the Pullman Company and the railroad?

A. It is usually paid for in a lump sum in advance. Usually an arrangement is made with the Pullman Company and the railroad company for all collections, that is, including not only the transportation but also parking charges and service charges during the stops at the places where the car is stopped over.

Judge McMillan: You don't have any regular private [fol. 385] car routes, it is just a hit or miss proposition?

A. Yes, sir.

Judge McMillan: You might have one tomorrow and you might not have another one for some time?

A. That is true.

Judge McMillan: Would those cars be used by land companies and so forth?

A. No, sir, by people that would like to have exclusive service, a little above what would be available in a regular train or where their movement takes them to a spot where they couldn't get desirable accommodations on the regular train.

Voir Dire by Mr. Lewis (resumed):

Q. Are those the cars that are referred to in this exhibit here as composite cars?

A. No, sir, you will find those rates at the top of page seventeen of that tariff A-12 under section four, headed "private car per diem rates."

Q. These, then, would be private cars rather than the standard sleeping cars?

A. Yes, sir.

Q. Do you have to get special permission each time one of these cars operates, from the Railroad Commission?

A. No, sir, the rates are permanently filed. They are a part of the tariff.

Q. Have you applied to the Railroad Commission for an exception to this order with reference to this character of cars.

A. I know of no application to the Commission. You refer, may I ask, to the state Commission of Texas?

[fol. 386] Q. Yes, sir.

A. No application has been made. Our tariffs are not on file with the Texas Commission.

(Thereupon the above referred to document was received in evidence and marked Plaintiffs' Exhibit No. 6.)

(Witness excused.)

Mr. Graves: In view of the Court's intimations, I think we are through except for one thing. We have some affidavits that cover two subjects. One group of affidavits cover the subject of the make-up of these trains, what these railroad men call the consist of the trains. The other group of affidavits cover the subject of the difference between the revenues that would annually be taken in by the railroads involved in this suit if they applied to the coach rate, the average coach rates to the passengers in the Pullman cars instead of the first class rates that are now applicable. We are preparing now, by an understanding with opposing counsel, an excerpt from those affidavits, with a view of condensing the record on that subject, and we will have it ready by noon; and with that understanding we will rest.

Judge Sibley: All right.

[fol. 387]

#### DEFENDANT'S EVIDENCE

M. B. CUNNINGHAM, a witness for the defendants, was sworn and testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. You are M. B. Cunningham?

A. Yes, sir.

Q. You live in Fort Worth?

A. Yes, sir.

Q. How long have you been working for the Pullman Company as a conductor, Mr. Cunningham?

A. Thirty-five years next month.

Q. You say thirty-five years?

A. Thirty-five years.

Q. What various roads have you run on? Briefly outline them.

A. All the roads in Texas that carry sleeping car equipment.

Q. All the roads?

A. All the roads.

Q. What is your run at this time?

A. On the Katy Blue Bonnet, Fort Worth to Kansas City.

Q. How often do you go out on that train, Mr. Cunningham?

A. Every three days.

Q. Have you been continuously in the service of the Pullman Company as a conductor for thirty-five years?

A. I have.

Q. You are one of the intervenors in this suit, are you not?

A. Yes, sir.

Mr. Graves: He is an intervenor defendant, as I understand.

Mr. Morgan: Yes, sir. There are two groups of intervenors.

[fol. 388] Mr. Graves: Yes, sir.

Q. Now, Mr. Cunningham, are you familiar with the rules and regulations of the Pullman Company as promulgated for the use and instruction of Pullman conductors?

A. Yes, sir.

Q. Do you have one of their little books that are furnished to Pullman conductors?

A. Yes, sir.

Q. Do you have that with you?

A. Yes, sir.

Q. Is that the same book that was offered here in evidence yesterday on behalf of the plaintiffs, as instructions to conductors?

A. Yes, sir.

Q. I have forgotten the exhibit number, but that is identically the same book?

A. Yes, sir.

Q. Have you, in your experience, had occasion to attend the schools that are had for the conductors?

A. Yes, sir.

Q. Where do you attend those schools, Mr. Cunningham?

A. In Fort Worth.

Q. Are those schools attended by the Pullman conductors in that area?

A. Yes, sir.

Q. Are they likewise attended by the porters in that area?

A. Yes, sir.

Q. Do you attend the same schools?

A. No, sir.

[fol. 389] Q. You attend separate meetings?

A. Yes, sir.

Q. But you do know there are schools for the porters?

A. For the porters, yes, sir.

Q. Now, Mr. Cunningham, on this question of schools that are had, how long do they usually take?

A. Well, anywhere from an hour, probably, to an hour and a half.

Q. How often are they?

A. They try to get through in an hour's time.

Q. How often are they held?

A. Quarterly.

Q. Four times a year?

A. Yes, sir.

Q. Four times a year?

A. Four times a year.

Q. Now who attends those schools as instructors?

A. Well, in Fort Worth we have three that are instructors. One is the district superintendent, and his assistant. We have a safety supervisor that attends to the safety measures.

Q. What subjects are studies at these meetings?

A. Service in general and safety.

Q. All right. In addition to that does the company cause to be issued certain bulletins for the Pullman conductors?

A. Yes, sir, special bulletins that are posted in a bulletin book.

Q. Are those issued at any given intervals or just periodically?

A. At periodical times.

Q. There is no set time for that?

A. No.

[fol. 390] Q. Are those bulletins likewise furnished to the porters?

A. Yes, sir.

Q. All right. Now, then, when you talk about supervising service as a Pullman conductor, will you please tell the

Court just what you do, what a Pullman conductor does when he is supervising the service?

A. Well, he has various and numerous duties to perform.

Q. All right, what are they? That is what I want.

A. He has to look out after the air conditioning equipment; look after his porter to see that his porters are in uniform and the proper uniform and that they are in a clean condition, the uniforms are clean and neat looking. He has to look out after the cars, see that the cars are in shape to go out on the lines.

Q. All right, what else, if anything?

A. Well, everything that comes under that category. He has to see to everything.

Q. All right. Now, how about the passengers? What if any service do you render to the passengers?

A. Why, I render the service of taking care of passengers. I have passengers put in my care sometimes at the station before I leave. Sometimes old people and sometimes children and girls. Those are looked out after to see that they are taken care of, to see that they get their meals served in the sleeping car if they are too feeble to go to a dining car or not able to go to a dining car.

Q. All right, how about the sanitation of the car? Who is responsible to see that it is properly cared for?

A. The Pullman conductor.

Q. Mr. Cunningham, are you familiar with the sanitary [fol. 391] code provided by the statutes of Texas?

A. I am.

Q. Whose duty is it to see that the sanitation of the Pullman car is properly provided for?

A. The Pullman conductor.

Mr. Graves: Just a moment. Is he speaking now about when a Pullman conductor is on the train or when there is no Pullman conductor on the train?

Mr. Morgan: When a Pullman conductor is on the train, Mr. Graves.

Mr. Graves: All right.

Q. Now, then, you say that it is your responsibility about air conditioning. What instructions do they give you about air conditioning? You haven't had that but about three or four years, have you, Mr. Cunningham?

A. I think it has been about four or five years.

Q. What special instructions, if any, do you receive about that?

A. Of course, we don't have any instructions in regard to the mechanical part of the air conditioning equipment. We couldn't correct a mechanical error. We have instructions as to how to control the air conditioning on the inside of the car at what is known as the control panel. We have certain temperatures for day time and certain temperatures for night time. We are supposed to use a day time temperature, a temperature for day time only, and not night temperature, and vice versa with the night temperatures. In the event of a failure in this air conditioning, cars getting too hot when it is supposed to be comfortable or cool, we have to go then and see what is the trouble. There is a red light on that board that flashes, usually will flash when there is any trouble in the line, but I have known [fol. 392]occasions when the red light didn't flash and we would have to go hunt for it otherwise. I have found times when the car was heating in the summer time, and have gone and found a stuck valve. Well, you can go to your control panel and find out where those valves are located and go look and see whether it is on or off, on an on or off position. If it is you can sometimes adjust that by shaking the lever backwards and forwards and it will pick up and start again.

Q. All right.

A. And you might say that the Pullman conductors on the cars are held strictly accountable for man failures, what is known as man failures. That is something that they can correct, that they should know, according to their instructions, and if carried out they could prevent.

Q. All right, what experience, if any, have you had with the porters leaving the ladders in the aisles, stools in the aisles?

A. Porters have a little short ladder that they use in making down berths. They use that little ladder in order to climb up so they can hook the curtains over the curtain rods and for other purposes for which it might become necessary to use it. There are some porters that will leave that ladder standing in the passageway or the aisleway opposite the berth they are making, propped up against the head board, or I mean against the end of the other berth across in the opposite section. The conductor has to look and see that those aisleways are kept clear of

those ladders. There is danger of passengers passing through the car and tripping over it. The instructions are to fold that ladder and place it back under the berth that he is making.

Q. All right.

[fol. 393] A. Take the longer ladder which is used for climbing into the upper berths. The porters will carry those ladders sometimes to a passenger that is wanting to get into the upper berth, and in place of carrying it back to the locker and placing it in the locker he will leave it standing up against the bulkhead at the end of the car, which is contrary to instructions. The ladder is liable to fall and slip down against some passenger coming through the car.

Q. You are not suggesting to the Court that every porter does that all the time?

A. No, sir.

Q. Does that occasionally happen?

A. That occasionally happens, yes, sir.

Q. Is it the duty of the conductor to supervise that service and see that that isn't done?

A. Yes, sir.

Q. What about the linen room, is it your duty to supervise that?

A. The which?

Q. The linen department.

A. No, we don't have anything to do with the linen. Of course, if we see a porter starting to make down a berth with linen that is marked or soiled or doesn't seem to be suitable or in an insanitary condition, we would stop him and have him use different linen.

Q. All right. Now, Mr. Cunningham, in your many years of experience have you ever had any personal encounters with a Pullman porter?

A. Yes, sir.

Q. Just briefly tell the Court what happened and on what occasion?

[fol. 394] A. Well, one evening as we were leaving Galveston some years ago I had a porter on the car and the porter seemed to be in kind of—just not quite himself, like he might have been drinking. I called the Pullman's agent's attention to it at that time, who happened to be on the platform. He said to the porter, he said—

Q. Never mind what he said. Just let's get along.

A. Well, we were receiving the passengers for the car, and that was the car that was closest to the station. Of course, I worked back at that car so that all passengers who came back I could direct them to the different cars in the train. I had three different cars. After we got out of town—

Q. That was out of Galveston?

A. Yes, sir. I went forward and started at the front end of the car and worked back. Not with the train conductor. I lift railroad transportation and also Pullman transportation. I worked back through the cars until I got back to this last car that the Pullman porter was in that looked like he had been drinking. There were no passengers in this car with the exception of the Pullman agent from the Galveston district. He was sitting at the back end of the car in one section back of the section where this porter was making down a berth. As I came along I noticed the porter climbing up on top of the arm rest and seats to unhook the curtain rods in the upper berth, that is for the upper berth, to put the rod in position. I said something to him about it. I was asking him if he didn't have a short ladder or box or something to stand on instead of climbing up on those head rests or arm rests. He didn't say anything in reply, but turned and struck me in the top of the head with a berth key.

[fol. 395] Q. With a what?

A. A berth key.

Q. One of those big keys used to open the berths with?

A. Yes, sir, a heavy instrument used to open berths. This blow was struck with force enough to knock me on my back in the section opposite, and when he struck me I fell in this section opposite. Mr. Magden got up and came forward and tried to get hold of the porter to separate him, get him off me, and in the—in his efforts to get the porter away from me he got blood on the front of his coat, his clothes, and when I finally did get the porter off me, why, my head was bleeding quite a bit, blood was all over my clothes.

Q. Were you carried to the hospital, Mr. Cunningham?

A. After I got to Forth Worth the next morning I went to the hospital and had several stitches sewed in my head.

Q. And was the porter tried for that?

A. The porter was arrested and taken off the train at the first stop and tried in the Galveston County Court and given three years, a three year sentence.

Q. Now, Mr. Cunningham, I will ask you if you have had any experience in the handling of conventions? Have you had any experience with that?

A. Yes, sir.

Q. Did you ever handle a bunch of cattlemen on cattle-men's conventions?

A. Yes, sir, I used to have those, quite a good many of them. I had one in particular I remember about. I had, I think, three or four extra cars that trip on the breaking up of that convention in Fort Worth, and I had one porter in there, I had gone to the cars before the cars were ready to leave, before we were ready to receive passengers, and I had [fol. 396] gone through to see how the porters were, if they were on the job. So I had one porter that said he knew all about how to handle this business, cowboys, so I said all right. So after the train was ready to leave town I went back, and the train left, and I started working on my last car and worked forward, and just as I got through working that car and stepped into the vestibule I heard a commotion coming through from the other car, a passenger said, "Let me to the black son-of-a-bitch, let me hit him." And the porter rushed out into the vestibule and he had on a white jacket and blood was running down on the white jacket and he had a red front on him, so much blood. He run behind me and said, "Conductor, save me. Don't let them hit me anymore." So as they come through the door I raised my hand up and said, "Gentlemen, what is the trouble?" And they said, "We asked that black son-of-a-gum to do something in there and he said he would do it when he got ready," and he said, "we proceeded to make him do it."

Q. All right, that was a bunch of cowboys out of Fort Worth?

A. Cattlemen and cowboys out of Fort Worth.

Q. All right, Mr. Cunningham, did you ever have any men on the train that tried to make improper advances toward the lady passengers on the train?

A. I have, yes, sir.

Q. Well, just tell us an experience of that sort.

A. I had one occasion in particular. That was out in El Paso some years back, quite a few years ago. Now, there was a lady on the car, she was kind of a timid natured lady, didn't seem to be a seasoned traveler or anything like that. There was a man on the car that was in the section right

close by, just behind her. I think he came along and smiled [fol. 397] and he sat down in the seat in front of her and talked awhile, and finally he got over on the seat by the side of her, and he annoyed the lady so much that she had to have her berth made down and go to bed. This was along about six o'clock in the evening. The next morning she got up and went to the dining car and it was the same old story over again. Finally I had to intervene. The next morning I went and asked the lady if she hadn't been annoyed by the passenger. She said she had. So she said she wished I would do something about it.

Q. All right, what did you do?

A. I went to the gentleman and told him that he would have to leave the lady alone, that she didn't care to have any more conversation with him, she was being annoyed and he would have to leave her alone. He threatened to report me to the Pullman Company for exceeding my authority. So I agreed with him that he had a perfect right to do so. But he never did make any report.

Q. All right, what experience, if any, have you had with porters while on duty becoming intoxicated, Mr. Cunningham?

A. I had one case of a Fort Worth porter, who is still in service today I might add, on a Santa Fe train. We had a drawing room of passengers, I think about three or four gentlemen. These gentlemen were playing cards and drinking. In fact, they drank a long way into the early morning hours. The porter was serving them, taking care of them in the way of getting ice and stuff for them. I saw how things were going. I cautioned the porter to be careful, not to go too far as to happen to take a drink of any of the liquor they had there because he might get in a condition where he [fol. 398] wouldn't be able to serve the passengers. In the same car I had a man and a woman that were trying to get acquainted, and finally did get acquainted to a certain extent that I thought there might be something otherwise than just a mere acquaintanceship. I also instructed this porter when I went to bed to be sure and look out after that situation. So I retired about the usual time, and after about two hours I was awakened by some commotion or talking outside, and I looked out over the curtain rod from the upper berth and I could see this man coming out this woman's berth that were getting together the night before. This porter just about

the same time came reeling down the aisleway of the car drunk. I got back, got up immediately and put my clothes on and got back on the job and stayed on the job from there on into Kansas City. On my diagram for that half of the morning I made a notation that my rest period was cut two hours short on account of a drunk porter. The Pullman Company paid me two hours extra time.

Q. Now, you say that during that time, was that the time you were supposed to be resting or were supposed to be in bed sleeping, Mr. Cunningham?

A. Yes, sir.

Q. Conductors do have on these long runs—you have rest periods?

A. On my long runs I have four hours.

Q. And likewise the porters have rest periods?

A. They have four hours.

Q. And during that time you say you saw this man climbing out of the berth of this lady?

A. Yes, sir.

Q. Now, was it the duty of the porter to have charge of the [fol. 399] car during the time you were asleep?

A. Service—in a certain way, yes.

Q. I mean supervise such services as that?

A. Oh, yes; yes, sir.

Q. All right. Now, Mr. Cunningham, have you had any experiences of men on the train wanting to buy drawing rooms for the purpose of occupying those with ladies they have met on the train?

A. Yes, sir, it was just a few months ago on this run to Kansas City I had two passengers, a gentleman and a lady in the car that came in from San Antonio, and they went to the lounge car after leaving Denison and became acquainted up there, and the man came back into the—as we pulled out of Denison I went up through the lounge car and I saw this gentleman and lady drinking, and then later about 11:30, I think probably, this man came back into the other car where I was sitting and said he would like to have the drawing room if he could get it. I said, "Why, certainly you can get it; you will have to have an extra fare railroad ticket, though, and then the difference between the single occupancy rate of the drawing room and your lower berth rate charged you too"; and he said, "Well, we have got another ticket." I said, "Where is it"? He said, "Up here in the lounge

car." I said, "You mean the lady that you have been sitting there drinking with?" He said, "Yes." "Well," I said "There won't be anything doing in that respect." So he said I shouldn't see so much. I said, "That's what I'm here for."

Q. Well, did he offer to tip you?

A. No.

[fol. 400] Q. What about tipping—is that a custom that prevails on Pullman trains with reference to the conductors; are they ordinarily tipped? Mr. Cunningham?

A. You mean for purposes of that kind?

Q. Yes, sir, or any other kind.

A. No.

Q. The Pullman conductors are never tipped, are they?

A. No.

Q. What about Pullman porters?

A. Pullman porters are tipped, yes; it is part of their salary.

Q. All right.

Mr. Graves: We ask that that last statement be stricken. It was not responsive to the question, and it is a conclusion on his part.

Judge Sibley: He could not have meant it accurately because the company does not pay it. I guess he meant that it is part of their income and that they expect to get it. That is common knowledge.

Mr. Graves: Yes, sir, and we recognize that.

Q. Now, Mr. Cunningham, you are Vice President of the Order of Sleeping Car Conductors, aren't you?

A. Yes, sir.

Q. You were here in attendance, of course, yesterday and saw all of these Pullman porters who came in here to testify?

A. Yes, sir.

Q. Is there any controversy, Mr. Cunningham, between the Pullman conductors and Pullman porters?

A. None whatever.

Q. You gentlemen are not angry with the Pullman porters, are you?

A. No, sir, we have no fight with the Pullman porters.

Q. In the main, do you find the Pullman porter to be pretty high-classed colored men?

A. We do.

Q. But you do find these exceptions which you have outlined here?

A. We do find exceptions, yes.

Q. Well, do you find that the porters, just the rank and file of porters, whether or not they are careless oftentimes in carrying out their assignments on the cars?

A. Yes, sir, some of them are very careless.

Q. Now, what experience, if any, have you had with reference to sanitation on the car, Mr. Cunningham, and particularly with reference to the way the porters—

A. Well, sanitation is one thing we look out for very carefully because there is a lot that depends upon sanitation and how the car is taken care of, especially if you have some contagious diseases in the car; if you have something of a contagious nature, why, they have to be—if it is a very bad case they have to be isolated in the drawing room in charge of a nurse; but sometimes we have cases like tuberculosis which are in the car—in the body of the car. A berth that has been sold to a tubercular passenger has to be condemned and not put on sale until the car reaches the terminal, where it is fumigated. Then the berth is left down, you might say, not even put away and locked up; it is left down so the bedding, the sheets and the pillows and blankets can air out and the curtains are buttoned across so it won't be unsightly to the passengers in the car.

[fol. 402] Q. I see.

A. In the other part—in the smoking rooms the porter frequently has to clean the smoking room and the smoking room floors and look into the closets and clean them. He is supposed to take his mop and use a bucket and mop those floors and use formaldehyde as a deodorant in those closets; and he mops up his smoking room floors quite frequently throughout the day and before retiring at night. There is one practice that a good many porters have which has caused a great deal of inconvenience on the company's side, and that is dipping his mops in the hoppers and scouring the floors.

Q. By that term, you mean that they dip the mop into the commode, is that what you mean?

A. Yes, they dip the mop into the commode.

Q. Yes, sir.

A. It looks as if they are clean but germs are there nevertheless; it cover a floor and whenever it dries you have a bad condition.

Q. Yes, sir. Now, have you ever known of a case where they used too much of this disinfectant?

A. Yes, sir, I had one porter one night that had some passengers in a smoking room and he wanted to go to bed; it was getting along after his bedtime, and he wanted to go to bed; so he takes a bucket of formaldehyde and wets the floor and scours around with it and in a very few minutes they all got up and went to bed. I walked in a very few minutes afterwards and the air was so full of formaldehyde it made my eyes smart and sting; he said he wanted them to go to bed and they sure moved out when he put that on the floor.

[fol. 403] Q. Mr. Cunningham, in the event of a wreck on a train whose duty is it to take care of the passengers on the Pullman car?

A. The Pullman conductor's.

Q. What instructions, if any, are you given by the Pullman Company with reference to your assignments in the event of such a catastrophe?

A: Give all the aid you can to those passengers that have been injured or wounded; if necessary, take blankets out of the car, and tear up sheets and make bandages out of them—pillow slips or sheets, and make—if the car is turned over you have to take the passengers out and you can take the mattresses out there and lay them on the ground so you can lay the wounded passengers on these mattresses.

Q. Have you ever been unfortunate enough to be in a wreck, Mr. Cunningham.

A. Yes, sir.

Q. On one or more occasions?

A. Several, yes, sir.

Q. Mr. Cunningham, in your long years of experience as a Pullman conductor, are you familiar with the plans that are worked out between the Pullman conductors on the one side and the Pullman Company on the other side, with reference to rearranging schedules and pooling runs for conductors?

A. Some, yes, sir.

Q. Will you please tell the Court just how this pooling is done? By pooling you mean rearranging schedules to use up the hours of the conductors. Will you tell the Court [fol. 404] just how that is done?

A. Why, by taking two runs and pooling them together. Two one night runs of less than 14 hours total elapsed

time cannot be pooled, but a run of 14 hours or more total elapsed time can be pooled with the shorter run; in that instance if you had conductors on a run of 14 hours or more, you could pool—and they did not make the 240 hours each month, you could pool those conductors with the shorter run and consume all the hours less than 240 hours.

Q. And all of that time up to 240 hours would not cost the Pullman Company any additional charge at all?

A. No, sir, no.

Q. If you worked more than 240 hours, then what additional pay, if any, would you receive?

A. You would receive the extra rate—that is, the extra service, extra time at the hour rate.

Q. Well, now, let's be specific, if we can, and illustrate with one particular run to show how this pooling or rearranging of schedules would operate.

A. Well, there is one particular run which we will use as it stands now in Fort Worth with the line that I am on. We make 220 hours per month, that is figuring on an 8 hour day with 30 hours (days) a month. There is three conductors on that line.

Q. That leaves 20 hours per month of time for each conductor that is not used in service?

A. For each conductor that is not used. Now, then, we have a little short run down to Ennis. The conductors that come in on that run come in and are released at 8 o'clock one morning and do not report until 5:15 the second after-[fol. 405] noon. The conductors on those runs could make the trip down to Ennis and back and have all day in Fort Worth after his run from Ennis; he would have all day in Fort Worth from 8 o'clock in the morning until 10 o'clock at night on his outbound trip. They could be pooled together with something like about 15 hours of excess time to each conductor.

Q. All right. Now, have the conductors in the past, and are they at this time ready to cooperate with the Pullman Company in rearranging these schedules and pooling these runs, not only at Fort Worth but at Dallas and at Houston and all over, in order to comply with the requirements of this particular order?

A. Yes, sir.

Q. And as far as the conductors are concerned they are perfectly willing to change their own schedules and rear-

range them and pool them so that those runs that do not have conductors may have conductors?

A. The conductors do not have any control of their schedules.

Q. I understand.

A. Schedules are made by the Company.

Q. Don't you have an operating agreement between the conductors and the Pullman Company?

A. Yes, sir, we have an operating agreement, but not as to individual schedules.

Q. Well, I understand the final determination of the matter is left to the discretion of the Pullman Company, and they can ultimately say whether they want to do this or not do it.

A. Absolutely, yes, sir.

[fol. 406] Q. All right. Now, have you known of the Pullman Company being required to employ any additional conductors to take care of different changes that have been made by the various regulatory bodies throughout the years?

A. No, I haven't.

Q. Do they employ additional conductors or has it been the custom in the past for them to rearrange the schedules and pool the schedules of the present conductors in order to take care of this extra work, if any?

A. That has been the practice, yes, sir.

Q. Now, Mr. Cunningham, what do you find from your experience on the trains today with reference to the drinking of intoxicating liquors?

A. Well, the amount of drinking is on the increase on the trains I am on. I can't speak for other trains; only the ones I am on.

Q. I understand, but on the trains you are on you say it is on the increase?

A. On the increase, yes, sir.

Q. You mean there is more drinking today than you have ever known before at any time?

A. Yes, sir.

Q. How often would you say to the Court that you encountered some man or some lady who has had too much to drink on your run?

A. Well, it seems like almost every trip. There may be a trip or two occasionally that there isn't someone drinking either in the lounge car or in the Pullman car.

Q. Mr. Cunningham, has there grown up a custom or [fol. 407] does there at this time exist—in the last few years the custom of some of the lady passengers on the train drinking as distinguished from formerly?

A. Yes, sir, there's almost as many lady passengers drinking nowadays as there are men.

Q. That same condition formerly didn't exist, did it?

A. No, it didn't exist before.

Q. Now, does that cause any additional difficulties in maintaining proper decorum on the cars?

A. It does, yes, sir.

Q. From your experience in dealing with the porters, Mr. Cunningham, have you found that they are able to handle a white lady, let's say, when she has had too much to drink?

A. Well, they never handle them when I am on the train. I can't imagine how they could handle a situation of that kind.

Q. You always personally attend to matters of that kind?

A. Oh, yes, sir, yes, sir.

Q. Now, Mr. Cunningham, is it a part of your duty as conductor to assign space to passengers who get on the cars?

A. Yes, sir.

Q. Of course, you make out your diagrams?

A. Yes, sir.

Q. And the Pullman porters shine the shoes and carries the baggage in and out and does the menial labor that is done?

A. Yes, sir.

[fol. 408] Q. Now, Mr. Cunningham, what experience, if any, have you had with reference to taking over Pullman cars that have been in charge of a porter in charge when you come on your run and find that the porter in charge, with reference, particularly, my question is directed to the sanitary condition of the car?

A. On my trip northbound I pick up a car that has been in charge of a porter from Oklahoma City to Parsons; that car is picked up along about 4 o'clock in the morning, and I don't get back into this car until along about 6:15, and the car—as a usual thing the car is in a very nice condition when I get back into it. So I can't say very much about that particular matter.

Q. All right. You haven't had a great deal of experience on that, then?

A. No, sir.

Q. Now, Mr. Cunningham, I will ask you if this custom is on the increase or decrease of men and women becoming familiar or more familiar on the train—is that custom on the decrease or increase at this time?

A. Well, I wouldn't say it is on the increase; we have always had those conditions.

Q. Well, with reference to the other conduct of passengers do you find more of that now than you used to?

A. There seems to be more of it now than usually because of the drinking in the cars. Why, with the drinking there is more familiarity than before.

Mr. Morgan: I think that is all.

[fol. 409] Cross-examination.

Questions by Mr. Graves:

Q. How long did you say, Mr. Cunningham, you have been in the employ of the Pullman Company?

A. It will be 35 years in—it will be 35 in July.

Q. With reference to this incident where the porter attacked you out of Galveston, Mr. Magnon was the Pullman agent who was on the train at the time?

A. Yes, sir.

Q. He is dead, isn't he?

A. I don't think so. He is retired and living in Houston.

Q. You don't know that he is dead?

A. No, if he is dead, I don't know it.

Q. When was that, Mr. Cunningham?

A. In 1928 or 1929.

Q. You are sure it was not in 1925?

A. No, it was not in 1925.

Q. It was not in 1925?

A. No, it has been since that time.

Q. You, of course, draw a distinction, Mr. Cunningham, between these colored men that have good characters and the others that do not have good characters?

A. Oh, yes, sir; we have got plenty of porters that are good porters, all right.

Q. How is that?

A. I say we have got plenty of porters that are good porters.

Q. How much special training does a Pullman conductor get before he is put in charge of a run?

A. He has ten days instruction on the road with another conductor.

[fol. 410] Q. 10 days instruction on the road?

A. Yes, sir.

Q. As a kind of an apprenticeship?

A. Yes, sir; he serves an apprenticeship; yes, sir.

Q. And he gets paid during that time?

A. Yes, sir. He also has a six month probationary period.

Q. These books of instructions to which you referred are furnished to all of the car service employees are they not?

A. Yes, sir.

Q. The porter has them as well as the conductor?

A. Yes, sir, the same book.

Q. Yes, sir. How long before leaving time are you required to report on duty at the train?

A. Oh, let's see, on this run that I am on now I report at 5:15 and we leave at 5:50.

Q. How long before leaving time is a porter required to report?

A. I don't know about that; I think they report a little earlier than that; maybe 5 o'clock.

Q. They are always there when you get there?

A. Not all of the time.

Q. Well, they are supposed to be, aren't they?

A. They are supposed to be, yes, sir.

Q. If they are not there, they are reported, aren't they?

A. Yes, sir.

Q. Just what is it now that you do in respect to this air conditioning equipment on the train, that a man of ordinary intelligence and a little training can't also do?

A. Well, there isn't anything.

Q. These instances to which you have referred in which you have rendered special or unusual services to passengers, [fol. 411] like say, an old lady who needs assistance, such incidents have occurred on the train, of course, where the conductor is in charge of the Pullman cars—

A. Yes.

Q. And you are not in position to say what happens on these cars when similar incidents occur, where the porters are in charge?

A. No, I wouldn't know anything about that.

Q. What is the run that you are on now, Mr. Cunningham?

A. On the Katy Blue Bonnet from Fort Worth to Kansas City.

Q. How many cars—how many Pullman cars are in the train, one or more?

A. We leave out with two cars.

Q. You leave Fort Worth with two cars?

A. With two cars, yes, sir. We interchange cars, though, en route; there is a St. Louis conductor that comes up from Dallas that connects with us at Denison.

Q. Now, you go on, then, to Kansas City?

A. Yes, sir.

Q. You tie on another main train at Denison?

A. Yes, sir, we consolidate the two trains at Denison and run as one train from Denison to Muskogee. At Muskogee they divide the trains again, one portion going to St. Louis and the other to Kansas City.

Q. I see. Then how many conductors are on the train, from then on when the train is consolidated?

A. Two conductors between Denison and Muskogee.

Q. How many, then, between Muskogee and Kansas City?

A. Just one Pullman conductor.

[fol. 412] Q. Well, when you say two conductors, you mean two Pullman conductors, don't you?

A. Two Pullman conductors; one St. Louis conductor with the St. Louis equipment, and one Kansas City conductor with the Kansas City equipment; they are on the train that has been consolidated at Denison between Denison and Muskogee.

Q. Yes.

A. Yes, sir; and then when they are split again, of course, the St. Louis conductor goes with his equipment to St. Louis, and I go with my equipment to Kansas City.

Q. When the train is split, do you know how many Pullman cars are on each branch of the train?

A. Two on each train.

Q. Two on each train?

A. Yes, sir.

Q. Have you ever had charge of more than two cars on a given train?

A. On that train?

Q. On any train.

A. Oh, yes, I have had as many as 7 and 8 cars.

Q. 7 and 8 Pullman cars?

A. Yes, sir.

Q. Now, you said something about conventions, these convention trains, and you mentioned one incident, I believe, that happened on a convention train, or was that a convention train where these—

A. Well, it wasn't what you might call a convention train; it was extra equipment put in to catch the overflow from the breaking up of a convention. It was on a regular train; it was not on a special train.

[fol. 413] Q. When was that incident?

A. Oh, that is quite a number of years ago.

Q. Can you give us an approximate idea?

A. Oh, it might be possibly 15 years ago.

Q. 15 years ago?

A. Yes, sir.

Q. You mentioned wrecks. Are wrecks on the railroad trains frequent now or infrequent?

A. They are less than they used to be, considerably less.

Q. You don't know what the statistics are on it, do you?

A. No, I don't.

Q. Well, since—

A. That is, I haven't had any notice of wrecks coming under my own supervision or in the immediate territory where I operate; that is what I speak of.

Q. Well, you do, in fact, know, that as a matter of fact, since you have been running on railroad trains the wrecks have been practically eliminated?

A. Yes, sir, a great many of them. We do not have very many bad wrecks any more..

Q. Now, you said that you have drinking on almost every train and on almost every trip that you take?

A. Yes, sir.

Q. Do you mean by that to say that you have passengers who get drunk on every trip?

A. They don't get drunk; very seldom we ever have a passenger that gets down.

Q. As a matter of fact, what you mean is that on a train such as the one you are now running on there is more social drinking?

A. Social drinking in the club car—what is called the [fol. 414] club car or lounge car.

Q. Yes.

A. And sometimes the drinking is in'the body of the car—the body of the Pullman car. If a passenger wants a table put up in his section of the car and he is served with set-ups, Mineral Water or White Rock from the club car or dining car, that is his privilege.

Q. When is the last time you know of a passenger being hurt on one of your trains from a ladder being left out in the-isle?

A. Well, we don't have that.

Q. You don't have that?

A. No, sir, if has occurred, but it hasn't occurred with me.

Q. Well, of course, you don't know what happens in that respect on these porter in charge runs?

A. No, I can't say about what happens on the porter in charge runs.

Q. Your testimony here as to your experience and observation is based entirely upon what you have—on the experience that you have had when a conductor was present?

A. Yes, when I was on the train, sure.

Q. Now, you recognize the fact that a Pullman conductor should be better qualified after he has had years of experience than when he is right new, don't you?

A. Well, I would think certainly that he has improved with age and experience.

Q. Yes, you recognize that that is an asset in your favor, in your particular case—you are better qualified now by reason of your experience?

A. Yes, sir, and I think the company advertises that fact [fol. 415] in a poster that they have of Conductor Chiles of New York City, showing him as a Pullman conductor of years experience and as being a qualified and efficient man.

Q. Do the rules of the Company require the Pullman conductor to report to the train conductor any serious or unusual incident on the train, such as where a passenger may become unruly?

A. If it is of such a nature that you can't control it yourself, yes, sir.

Q. You have no authority to eject the passenger?

A. No.

Q. The train conductor is the only man that has that authority?

A. Yes, sir.

Q. And in every instance where a situation arises that calls for discretion, if there is any doubt as to what is the

proper procedure, you are instructed to confer with the train conductor, are you not?

A. That is our instructions, yes, sir.

Q. And then you are supposed to follow his decision?

A. Well, when I report to him he does the acting then.

Q. Yes. Now, what are the average number of passengers on the train—on the car that you are running on now?

A. Well, on one car, the Kansas City to San Antonio car, I have come out of Kansas City recently with it sold out completely, uppers and lowers and drawing rooms—a twelve section observation car. It usually runs, though, all lowers and the drawing rooms and you might say three or four uppers; sometimes it is lighter than that, but not often; it always has all the lowers.

Q. All right. What is the average number of passengers [fol. 416] that you have in the two cars, Pullman passengers?

A. In the two cars? Well, let's see, say, 15 or 18; I would say around about anywhere from 15 to 20 passengers in the two cars.

Q. In each one or in the two cars?

A. No, in the two cars.

Q. All right, 7 or 8 per car?

A. Well, yes.

Q. 7 to 10 per car?

A. Well, something like 6 passengers, somewhere around there.

Q. All right. How long does it take you to lift the transportation in the two cars?

A. About 15 to 20 minutes.

Q. You and the conductor usually work together in that process?

A. We work together—

Q. Yes, sir.

A. —unless there is an occasion where sometimes I work by myself; if the conductor has heavy work in front, why, he will ask me to take up his tickets for him, and then I will take his as well as my own.

Q. How long does it take you, then, to make up your diagram?

A. Well, if I had to start with a blank diagram and make it up, it would probably take me 45 minutes or more; but my diagram is already started and all I have to do when I leave town is to enter the tickets on the diagram—the cash

and tickets that I take up; in that instance it doesn't take over—probably not more than 10 minutes.

Q. All right. Now, if a train was just—had half as many cars on it as this train you are now running on, one car instead of two, and the average number of passengers on that car was about half that many, how long would it take [fol. 417] you then to perform those two services, lift the transportation and complete your diagram?

A. Oh, just about one half of the time.

Q. Well, that would be a total of 10 or 15 minutes for both services?

A. Yes, sir.

Q. Then, on such a train as this Cotton Belt run, line 3370 from Dallas to Memphis, where you say you had an average of 3 passengers per day, after you had completed that process that you have just described, what would you be doing the rest of the time on the trip?

A. The same as I would be if I had the car full.

Q. The same as you would be if you had the car full?

A. Yes, sir.

Q. How much of the time would you be sitting down in a seat?

A. Oh, probably I would be sitting down more than I would on a heavy car, because on a heavy car you have more duties to perform and more to look out after.

Q. Yes.

A. Well, if a car didn't have but one passenger in it, if the car got hot, and that passenger made a complaint, it would be just as hard on you as if it would be full of passengers.

Q. Yes.

A. So then you have to take care of that situation just the same if the car is light as you would if it was full of passengers.

Q. Yes. If you go through a train that has several Pullman cars on it and you change the regulator, so as to either [fol. 418] lower the temperature or raise it, the instructions are that you shall notify the porter that you have changed it?

A. Yes, sir.

Q. Mr. Cunningham, what office do you hold in the Sleeping Car Conductor's Association?

A. Vice President of the Grand Division.

Q. Vice president?

A. Yes, sir, Vice President.

Q. Vice President of what?

A. Of the Grand Division.

Q. What is the name of the organization?

A. Order of Sleeping Car Conductors.

Q. Order of Sleeping Car Conductors?

A. Yes, sir.

Q. And it is national in its scope?

A. National in its scope. It is international too, you might say.

Q. International too?

A. Yes, sir.

Q. This limitation that is upon the Pullman Company's right to pool these runs is the result of an agreement between the Pullman Company and the organization, is it not?

A. In respect to the one-to-one night operations, yes, sir.

Q. Well, whatever the limitations are, there are certain limitations upon the Pullman Company?

A. Yes, whatever the limitations are they are the result of an agreement between the Order of Sleeping Car Conductors and the Pullman Company.

Q. Yes.

Judge McMillan: Is this an independent union or is it [fol. 419] affiliated with something?

The Witness: With the American Federation of Labor.

Judge McMillan: How long has it been in existence?

The Witness: Nearly 20 years.

Judge McMillan: Nearly 20 years?

The Witness: Yes, sir.

Judge Sibley: Anything else, Mr. Graves?

Mr. Graves: Yes, sir.

Q. This order that was promulgated by the Railroad Commission was originally issued at the request of the Order of Sleeping Car Conductors through their attorneys?

A. That is right.

Q. And at the time that order was issued there was no notice of hearing at all before the order was issued?

A. No, I think the Commission—

Mr. Lewis: If the Court please, we object to that. The records would be the best evidence.

Judge Sibley: I was wondering about that. The record didn't disclose to me whether there was a hearing or not before the first order.

Mr. Graves: Yes, sir, the answer admits there was one hearing, Your Honor.

Judge Allred: That is my understanding of the pleadings.

Mr. Graves: Yes, sir. Well, but the order speaks for itself to this extent, the order states—the original order states that it was done on the Commission's own motion, [fol. 420] and we want to show that it was done at the request of this organization.

Judge Sibley: Well, how would that matter? The Commission did it.

Judge McMillan: They are the powers that be. Are we concerned with their motives?

Mr. Graves: Yes, sir; we have authorities that we think would be applicable on that very point. We think, in other words, that a Court of Equity, when it comes to pass on the reasonableness of an order of this kind or any other kind of police regulation can look under the skin for it.

Judge McMillan: That is certainly contrary to all holdings of Three Judge Courts in the oil cases; it frequently develops that we are not concerned with their motives.

Mr. Graves: Yes, sir, if you have a question of regulation or something of that kind, where they have the undoubted power, that would be a different question, but if it is as to rates, take the opinion of Judge White, then Associate Justice, in the 219 United States in Southern Pacific against the I. C. C., the Court held that it was the duty of the Court to look underneath the surface of the order and determine what is behind it, and whether or not it is an honest, good, fair rate order.

Judge Sibley: Well, I am against you on the merits of it, but if you want to put it into the record, we might be wrong in our ideas and you might be entitled to have it in. [fol. 421] Mr. Graves: I don't care to pursue it any further, Your Honor.

Judge Sibley: All right, sir.

Q. You don't pretend, Mr. Cunningham, to say to the Court that conductors are all perfect, and the porters are, in the main, not perfect?

A. No, sir.

Q. These frailties are human frailties, are they not?

A. Yes, sir.

Q. And these matters that you have mentioned are matters of character, and the conductors, if they are not the right kind of men, are subject to those criticisms too.

A. Yes, sir, we have some conductors that are not 100% perfect.

Q. In the main, though, they are good men, are they not?

A. I think so.

Q. Just as in the main the porters are good men.

A. Yes, sir, or anyone else.

Q. Well, now, they are better than the average because the company makes an effort to get good men in both capacities, doesn't it?

A. Yes, sir.

Q. In the beginning?

A. Yes, sir, they investigate very thoroughly to find out whether they have got good men before they employ them.

Q. And keep on supervising them to find out whether they have made any mistakes?

A. From time to time, yes, sir.

Q. You testified at the Railroad Commission hearing, didn't you, Mr. Cunningham.

A. I did, yes, sir.

[fol. 422] Q. That is all:

#### Redirect examination.

##### Questions by Mr. Morgan:

Q. Mr. Cunningham, how often do the train conductors actually go back through the Pullman cars?

A. Sometimes once on the trip to Kansas City out of the Division, out of Kansas City, sometimes twice, if all depends on their duties in the front. If they have got quite a bit to do, and haven't got time they can't possibly come back through.

Q. Do the train conductors have keys to the Pullman cars?

A. No, sir.

Q. Who does have car keys for the Pullman cars?

A. The Pullman porter and Pullman conductor.

Q. You, as a conductor, or the porter, or either of you, you could lock the door so that the train conductor couldn't ever get back there?

A. Yes, sir, he couldn't open the door from the outside without a key.

Q. What is the duty of the Pullman conductor when the train is switching; like when your train goes to Waco?

A. Where they are cutting a train in two, and switching out a car, it is the duty of the conductor to go through and instruct the porter and put the tail gates across, and not only put them across, but fasten them, because there have been times that passengers have been injured, and not only passengers, but employees, on account of them not being fastened.

[fol. 423] Q. Is that the responsibility of the Pullman conductor?

A. Yes, sir.

Q. How often do you see supervisors on these trains, Pullman cars?

A. On my train, I guess it would be once a month.

Q. How often does the brakeman come through the car?

A. On the train that I have out of Kansas City the brakeman rides at the back, and that is over a flat track there, and he rides there probably for that reason.

Q. Is that uniformly true? Do brakemen always ride back there?

A. No, sir, in some instances the brakemen do not ride back there. They come through the cars occasionally, but they don't ride back there.

Q. What service, if any, does the train brakemen render to the passengers in the Pullman car?

A. None whatever.

Q. What service, if any, does the porter in the chair car render to the Pullman passengers?

A. None whatever.

Q. Does he ever go back there?

A. No, he has no business there.

Q. When we speak of brakemen and flagmen, those terms are used, mean the same thing, do they not?

A. Not necessarily. They have trains where they have a brakeman exclusively, and also a flagman, but not on these trains.

Q. I am talking about those trains.

A. I don't know if there are any Texas trains that have [fol. 424] the two different.

Q. I didn't get it clear when you were talking about that gate. What kind of a gate is that?

A. A collapsible gate. It is called a tail gate, on the end of each passenger car and Pullman car.

Q. Is it a hazard to the passengers?

A. It is a hazard, if you don't fasten it, because they may become very loose, and if you lean against it, sometimes they will collapse and shut up.

Q. What have you found about the porters? Have they caught on to the operation of this air conditioning very well?

A. Some of them haven't, no.

Q. Some of them haven't?

A. No. Seems to be all Dutch to some of them.

Q. All right, Mr. Cunningham, have you found that most porters like the temperature a little warmer than white people?

A. As a rule the porters like a little warmer temperature than anyone else, yes, sir.

Q. Now, Mr. Cunningham, when these zone superintendents or zone supervisors or agents for the Pullman Company who do the inspection, you conductor kind of have a grapevine route, as well as the porters, of getting the message around that this fellow is in that territory, don't you?

A. Yes, sir, a method of signals.

Q. And when the supervisor is going to be around, all of the conductors know about it, and all of the porters know about it?

A. Yes, sir, sometimes as much as an hour or more in advance.

Mr. Graves: I don't think it is very important, but I think he is covering a great deal of territory, asking whether all [fol. 425] of them know about it.

Judge Sibley: Didn't one of your witnesses so testify.

Mr. Graves: Yes, sir, and we don't make any question about that. They probably endeavor to find out about it, but I don't see how a man can know that they always know about them.

Judge Sibley: Even in school it was a little different when the teacher was looking than when she wasn't. All right, any further questions?

By Mr. Morgan:

Q. What supervision, Mr. Cunningham, if any, do the porters have in the operation of that car other than what

they receive from the conductors, other than when these supervisors are coming along? Do I make myself clear?

A. I don't believe I got that.

Q. All right. What supervision does the Pullman car have while en route?

A. You mean the Pullman porters—

Q. What supervision, if there isn't a Pullman conductor there, what supervision is there on the car other than the supervisor who travels periodically?

A. None only what the Pullman conductor gives out.

Q. That is all.

#### Recross-examination.

##### Questions by Mr. Graves:

Q. Some questions have been asked you by counsel about what goes on on your trains. I will have to ask you again; [fol. 426] you are speaking entirely from your experience on the trains where Pullman conductors are present?

A. Speaking entirely from my experience as a conductor on cars on which I operate.

Q. So, you don't know how often the train conductor comes through the train on these porter in charge operations?

A. No, sir, I can't answer something on a car I was never on.

Q. And you don't know where the brakeman or flagman rides on those trains?

A. No, sir, I don't.

Q. That is all.

Judge Sibley: We will take a five minute recess.

(Witness excused.)

(Thereupon at 10:40 o'clock A. M. Court was recessed until 10:55 o'clock A. M.)

W. M. HADLEY, a witness introduced by the Interveners, having been first duly sworn, testified as follows:

#### Direct examination.

##### Questions by Mr. Morgan:

Q. What is your name, please?

A. W. M. Hadley.

Q. Where do you live?

A. San Antonio, Texas.

Q. How long have you lived in San Antonio?

A. Since March 1920.

Q. What business are you engaged in?

[fol. 427] A. Pullman conductor.

Q. How long have you been thus engaged?

A. It will be 15 years next June.

Q. Continuously?

A. Yes, sir.

Q. Over what railroads have you run, Mr. Hadley, during that time?

A. During that time, practically all of the railroads in the State of Texas.

Q. You were shifted about?

A. I have been, while I was on the extra board for 9 years.

Q. You are a party to this suit, aren't you, Mr. Hadley, as one of the interveners?

A. So I understand, yes, sir.

Q. Mr. Hadley, will you tell the Court briefly just what you do in supervising the service of a Pullman car?

A. Well, I go according to the instructions from the Pullman Company, which is to—when I go down to the train at night, I report for duty, check up the cars, find out if the porters are on duty, and check my diagrams, as I go through the stations, and find out if the berths are made properly, single sections or rooms, and that the air conditioning is properly set. I do that frequently. If I happen to meet the platform man, and he tells me that he has just been through there, I don't check after him, but frequently he says he doesn't have time, and for me to go ahead.

Q. That is before you take off?

A. Yes, sir.

[fol. 428] Q. After the train starts, what do you do?

A. If I don't collect the tickets at the table inside the station, railroad and Pullman, what we don't get there, I take up on the train, and collect cash fares, because they have gotten down late. I transfer passengers from upper berths to lowers, and lower accommodations, and things of that kind. Then, I go through the train and—that is, the cars in my charge, and check them to find out if they match up with the diagrams; and go back and work my diagrams up then.

Q. Is it a part of your duty under your instructions to keep proper decorum in the cars?

A. Yes, sir, all employees on the Pullman cars are under my personal supervision, and I am held accountable for their actions.

Q. I am not talking about the duty to the employees. Is it your duty to see that on the cars the passengers on the cars conduct themselves properly?

A. I so understand.

Q. Do you do that?

A. I try to.

Q. With reference to the employees, is it your duty to see that the employees on the car properly carry out their instructions and their assignments?

A. Yes, sir.

Q. Do you do that?

A. Yes, sir, I endeavor to do that.

Q. What is your run at this time, Mr. Hadley?

[fol. 429] A. Well, I operate on two runs: I operate on what we call the Katy Limited, or 11 o'clock Katy from San Antonio to Austin, from Dallas to Denison, Texas, and return. My next trip is from San Antonio to Corpus Christi on the one-car line.

Q. Is your run what is commonly known in the language of the conductor as a "pool" run?

A. It is pooled in a way. It is two runs together. In order to make a relief run, two reliefs that would make a regular run, or regular work, we pool those, and that makes a regular conductor operation.

Q. While we are on that subject, will you tell the Court how there could be any additional pooling or changing of schedules of conductors in your particular runs to take care of one of the lines complained of in this bill, namely, the one from Denison up the Oklahoma line. Is it possible for pooling to be accomplished there?

A. I don't think it would be necessary to pool the line. The hours would be so short to run a man over to Durant on that. It is only about 25 minutes between the time where we get off at Denison.

Q. Was the terminal point formerly at Durant?

A. One time we ran to Parsons, Kansas, and one time to Durant.

Q. How long does it take the train to run from Denison to Durant?

A. About 25 minutes.

Q. How much per hour are the overtime conductors paid?

A. It is based on overtime, up to 240 hours, just the regular rate of pay.

Q. What is the regular rate of pay?

A. 80¢ per hour.

[fol. 430] Q. In this particular case, would it be possible for that run to be extended to Durant without consuming more than 240 hours of the conductors' hours on the train?

A. Well, it would take a little more than that, I believe, on the 31 day month, anyhow.

Q. You have attempted to calculate that, haven't you?

A. It wouldn't run over that on me, because my hours are shorter on the other end of the trip, but two conductors on the 31 day month, I am pretty sure it would run a little bit overtime, not much.

Q. What experience, if any, have you had with reference to children or old people being committed to your particular care on their journeys?

A. I have had many cases of parents bringing their children down, placing them in my care for various trips. Also, with children bringing their elderly parents down, sick, afflicted people.

Q. Can you give us a specific instance of some children that have been committed to your care, of tender age?

A. I know of a good many of them. I can remember one that I had out of Houston, Rosenberg, Texas, a few years ago, and some passengers came to the train, and when I opened up the trap the porter and myself, they were standing near, and they said, "Where is the Pullman conductor?" and I said, "I am." They said, "We have a little girl to place in your care." She was going to Los Angeles, California. She had only half fare ticket, so that she was less than 12 years old.

Q. She was traveling alone, Mr. Hadley?

A. Yes, sir, so they gave me a letter—

[fol. 431] Q. You mean, her family?

A. Yes, sir, her family gave me a letter, that said in that letter where she was going, and what they would like for her to eat in the diner, and asked if I would look after her, and I told them that I would, and would turn the letter over to the connecting conductor in route, and would tell him to turn it over to the next one.

Q. Is that an unusual, or an average, ordinary experience that Pullman conductors have?

A. We have one's similar to that frequently. Sometimes they don't give letters, but just ask us to take care of their children going from point to point.

Q. Mr. Hadley, have you ever had any experience with passengers on the train, both men and women, attempting to become intimate with the others?

A. Yes, sir, I have had a number of cases of that kind.

Q. Does that happen frequently or infrequently?

A. Well, I wouldn't know just how to term the words frequently or infrequently there. It happens ever so often.

Q. Well, can you be specific? Can you tell the Court of a definite experience on that, in recent times, that you have had?

A. Yes, sir, I can.

Q. All right, just relate it briefly.

A. Well, I had one case going out of San Antonio on the train, S. P. 313, at that time was operating a car to Corpus Christi, and another to McAllen and Brownsville. I was lifting my transportation. I found there was a lady on a ticket, and a gentleman on a pass. They were getting pretty familiar with one another. I had lifted their transportation [fol. 432] and saw they were not man and wife, so as I started out to the other car I told the porter to kind of watch that party for me. I was going ahead and would be busy for a few minutes, and if anything happened out of the ordinary, to get me immediately.

They were kind of making a scene before the other passengers, and so he came up to me in a few minutes and says, "Cap, that man has just gone to bed with that woman." So I immediately went back, and knowing the man's name, I shook the curtain, and didn't get any reply, I shook it again and told him they only had transportation for one party for that particular berth, and still I didn't get any reply, and so I called the man by name and told him to go to his place in another car. He had a place assigned to him, and he immediately got out and put on his coat and put his feet in his shoes and went back to the car where he belonged.

Q. The man did comply with your request?

A. Yes, it didn't cause enough trouble for me to think I would have to go get the train conductor.

Q. Have you had any experience with any man or woman

on the train reaching a stage of insanity, becoming mentally unbalanced?

A. Yes, sir, I had something similar to that a short time ago.

Q. What was that?

A. I was on this 11 o'clock Katy, which I run on, and there was a passenger that I found boarded the train at Muskogee, Oklahoma, and he had been drinking all the way down. After leaving Dallas at night I was back in the lounge [fol. 433] car making up my diagram and in making up my tickets, and this party came back and sat down in the car smoking, and talking, and I thought he was talking peculiar like, so all of a sudden he told me, he said, "Conductor, this isn't right." He said, "I am not going to have what is going on." He said, "There are some people in this car that have a dummy, and are trying to scare me with it, put it in my seat." I looked at him, and I said, "Certainly we are not going to have anything like that—"

Q. Let's not go into too much detail.

A. —at any rate, the man acted out of his head, and evidently was, and he raised so much Cain, and got up waving his arms, and said he would kill those people if they didn't quit trying to scare him with that dummy, and I suggested that I move him, and he wanted to stay and fight it out with the dummy, and finally I persuaded him to move to another car. By that time it was twelve-forty-five, and the train conductor came back to check with me, and I told him what had happened, and I asked him to move him to Section 15, where there was a section that wasn't full.

Q. And did the train conductor—what time did the train conductor get there?

A. About 12:45.

Q. Was that the first time you had seen him after leaving Dallas about 11?

A. Yes, sir.

Q. What did the train conductor do with him?

A. He went with him, and I got my diagrams and was going to put out my cards, and when I got to the next car, [fol. 434] instead of No. 15, the man was in the drawing room, and the conductor was standing by the door, and I told him, I said, "Section No. 15 is where this man was going." And he said, "He has gone in this drawing room and I can't get him out." And I went in the drawing room, and I said, "We are tired of this business. The train con-

ductor will stop this train and put you off if you don't stop this." And he followed me on off, and I put him in the section, and he acted as though he was going to bed, and in a few minutes the porter told me the man was going ahead, There were ghosts in the car, and he went to the day coach and stayed there the balance of the night.

Q. What did you find was wrong with the man?

A: I understood from the passengers the next morning who were talking about his actions, he had been in the hospital for delerium tremens, and had started drinking again.

Q. Mr. Hadley, what—have you had occasion in your operations to take over a car that formerly was in charge of the porter, and the term is commonly referred to as porter in charge cars?

A. I do that every trip on the Katy.

Q. Where do you pick up that car?

A. I pick up two at Austin. The porters also have the Ft. Worth and Dallas car, and when I leave Denison I pick up the Kansas City car that the porters handled from Kansas City to Denison and Tulsa.

Q. What has been your experience in reference to cleanliness of those cars?

A. Some are different from others. Some porters seem to try to do their work, but most of the time I find there are [fol. 435] cigarette stubs and ashes and matches in the bottom of the car, sometimes I find beer bottles rolling around in there, a danger and a hazard to passengers.

Q. What are the regulations of the cars with reference to allowing passengers to smoke in the regular chair of Pullman cars?

A. They are instructed to request them to refrain from smoking there.

Q. Is there a compartment provided—

A. Yes, sir, there is a smoking room for men, and in some of the cars there is a lounge car.

Q. What has been your experience with reference to passengers that you have taken over on these porter in charge cars as to smoking in the main body of the car?

A. I find on numerous occasions, and have reported some of them, at Denison when I pick up one from Tulsa and one from Kansas City, when they have a pretty good bunch of oil men in there, sometimes they have 10 or 12 people in a car, why, the cars have cigarette stubs and ashes on the floor, and beer bottles rolling around, and sometimes when you go in out of the fresh air the smoke is thick. They

smoke so much the air conditioning hasn't been able to pull it out.

Q. What effect does that have on the air conditioning system?

A. It doesn't have anything to do with the system, it makes the air foul.

Q. Do you know that smoke has been one of the most perplexing and difficult problems of the air conditioning system to handle?

A. No, sir.

Q. You are not familiar with that?

[fol. 436] A. No, sir.

Q. What has been the experience you have had with the passengers when you find their car in that condition, and the passengers thus engaged in smoking, have you had occasion to request them to refrain *them* from smoking in the car?

A. I always do that.

Q. What has been the attitude of the passengers?

A. A number of them have called my attention to the fact that they have been smoking from Tulsa to Denison, or from Kansas City, and they don't know why they should stop now.

Q. And on that trip before you took over was the porter allowing them to smoke?

A. Yes, evidently, from the looks of the car, and the ashes.

Q. What experience have you had with reference to the porters giving you the diagrams when you took over those cars? What condition do you ordinarily find them in?

A. Well, I find that especially on the Tulsa-Denison car, where there are five different porters operate, that I catch, or the Tulsa-Galveston car, and I pick them up at Denison, I have to make changes. There are tickets entered in error, and sometimes the wrong rate. I have found it where they collected the wrong rate, or too much for the fare, and I have to correct those diagrams, and there is another diagram turned over to me that the porter closes at Tulsa when he takes that car in, and it is turned in to me to hand in to the office at San Antonio. Some of those, the cashiers have told me of those diagrams, and I have seen them sending a note.

Mr. Graves: We object to that, and ask that it be stricken.

[fol. 437] Judge Sibley: All right, the hearsay is excluded.

Q. Now, Mr. Hadley, what has been your experience with reference to the porters leaving the ladders in the aisles, the

long ladders that go to the second berth, the upper berth, and the short ladders and stools, what do you find about that?

A. We find that frequently that the ladder is in the aisle, and we request them to keep the ladder out of the aisle; and also the linen locker door is open frequently, and is a hazard to passengers coming around the corner. We close it and tell the porter to keep it closed.

Q. Where is the linen locker door you talk about?

A. Directly behind the smoking room on a car as you turn around to come into the car.

Q. Is that a relatively small space in there?

A. Yes, sir, a little locker, and the door opens outward.

Q. They often leave that door open?

A. Yes, sir, and the company keeps after us all the time about that.

Q. Details like that, is it your duty to see that those details are cared for from time to time?

A. We are instructed in every safety and service meeting to that effect, yes, sir.

Q. Well, in your operations as a conductor are you constantly on the watch for such items as that?

A. Positively. If I don't I would be reprimanded.

Q. What about the sanitation, the sanitary condition of the cars? Is that part of your assignment and part of your responsibility?

A. Yes, sir.

Q. Are you constantly attending to that when you are on the car?

[fol. 438] A. Yes, sir.

Q. What about the ventilation on the car?

A. Yes, sir, the same way. I find frequently in the lounge car that the ventilator back in the smoking room is left closed, and if that is true that smoke is allowed to go all over the car. I frequently find that closed and I close it or tell the porter to.

Q. What do you mean, when you pick up a car?

A. Like at Denison when I pick up a car, San Antonio to Kansas City, it is a lounge car from San Antonio to Denison.

Q. All right. Now, Mr. Hadley, air conditioning is relatively new on the trains, it is the last three or four or five years at least, isn't it?

A. Yes, sir, some four or five years.

Q. Do you know whether they have both mechanical refrigeration as well as using ice for the cooling of the cars?

A. Yes, sir, we have mechanical, ice, and some steam cars.

Q. All right. Now, conductors are given special instructions on the temperatures and how to regulate the air conditioning, aren't they?

A. That is right.

Q. Now, what have you found as to the porters? Do the porters catch onto the operation of the air conditioning pretty well or not?

A. Well, some of them do, but there are some that we have considerable trouble with, especially when a car gets too hot. We find more of them too hot than anything else. And I will ask the porter to make a correction to see if he knows about it, and numerous times they will go to the panel and try to make it from there. It isn't always that you can. Sometimes you will find a valve stuck, frequently you will [fol. 439] find a valve stuck.

Q. Where are the valves located on a car?

A. Usually in the end sections on most cars. You will go there and pull the seat out and there is a little trap there and you can work that valve with your hand. The porters have those instructions the same as we do, but they don't get it.

Q. Such difficulties as you are enumerating, they are usual or unusual?

A. I have some of them practically on every trip.

Q. Then do you have some instructions, or I mean do you have some particular difficulty with the porter on those particular items?

A. Not with the same porters.

Q. I don't mean that, I mean with reference to the air conditioning?

A. Yes, sir.

Q. Do you have both winter air conditioning and summer air conditioning?

A. No, sir, we don't use the ice on the cars now, or don't have the cooling air conditioning. Of course, we have air conditioning the year around. There is a difference in the air conditioning and cooling. You don't want to conflict with that. There is air cooling and air conditioning. The cars that are air conditioned are air conditioned summer and winter.

Q. You still steam heat them in the winter time, don't you?

A. Yes, sir.

Q. And that likewise is a matter that comes under your supervision?

A. Yes, sir.

Q. Steam heating is an old process that has been in use [fol. 440] many years, isn't it?

A. As far as I know. I have known it always.

Q. Your run now is from San Antonio to Denison, Texas?

A. That is right.

Q. On that run you have occasion, of course, to pass through Austin?

A. Yes, sir.

Q. Have you ever had occasion to handle university students? I mean students attending the University of Texas?

A. Numbers of times.

Q. When these university students go off to Fort Worth or Dallas on a football game they are usually a pretty rowdy bunch, aren't they?

A. Yes, sir. They are out for a good time.

Q. What experience have you had, if any, with those students failing to obey the requests of the Pullman porters?

A. Well, on one particular trip through Austin, in picking up some cars here, I found that a porter came running back to me where I was working and said that the students were breaking in the door and said they were going to kill him if he didn't let them through to have some spaces, that there was no room in the coaches. And I rushed up there at the door and found that the glass had been broken and screen torn and a bunch of students milling around there demanding to get in.

Q. You mean the glass on the Pullman door?

A. Yes, sir.

Q. Now, was that door between the Pullman and chair cars, was that locked?

A. Yes, sir, I had it locked because the students were demanding to get in there before that time when I went back to do some work, because they said there wasn't any room [fol. 441] ahead. We didn't want them in the Pullman because they were not Pullman passengers.

Q. Did the porter attempt to handle the situation?

A. I guess he did. They were ringing the bell and he went up there and they demanded to get in and he wouldn't

let them in, as I told him not to, and they broke the glass and screen.

Q. What did you do?

A. I told them they couldn't come back and they said they would, and I just kind of put up a bluff, I guess. I said they would come back over my dead body. But I guess they didn't, because I am still here.

Q. Have you had occasion or experience with university students riding in the Pullman cars attempting to get boisterous when riding in the cars?

A. Yes, sir.

Q. That isn't true of all students, of course, but some of them do that, don't they, Mr. Hadley?

A. That is correct.

Q. They are not any different from some other folks, the grown folks?

A. The old folks, too, yes, sir.

Q. Have you ever had occasion to find some of those boys and girls attempting to conduct themselves improperly on the train?

A. Yes, sir.

Q. Well, just tell the Court one instance of that, please.

A. Well, I took a young student out of the berth with a girl student going through Austin one time, after we left Austin, and sent him up ahead to the chair car, took him up there and told him to remain up there. I happened to know the young lady, to know her name and her family, and [fol. 442] I told him that I would report both of them if he didn't, and he did, he stayed up there.

Q. Of course, he complied with your request?

A. Yes, sir.

Q. What do you find with reference to the amount of drinking that now goes on on the train, Mr. Hadley?

A. Well, it is much more now than it used to be, because it is openly done. It is permitted. They get on sometimes with a bottle in their hand. I have found them coming right down the ramp of the depot swinging a bottle, a quart bottle. Some people don't seem to care who sees them or anything.

Q. Would you say to the court that the amount of drinking now is greater than it has been during the fifteen years you have been on the Pullman cars?

A. Yes, sir, much more, by women, men and students.

Q. Do you find that same thing true with reference to lady passengers the same as you do to men?

A. Yes, sir.

Q. I mean the increase. I am not suggesting they all drink.

A. Yes, sir.

Q. Now, Mr. Hadley, have you ever had occasion for a woman passenger on your train to become intoxicated to the extent she was unable to take care of herself and it became necessary for you to take care of her?

A. Yes, sir.

Q. When was that?

A. Well, there was one that I testified to before the other hearing.

Q. You mean the other hearing, the hearing before the Railroad Commission?

A. Yes, sir.

[fol. 443] Q. Briefly what was that?

A. Well, that was a party who got on the train at Galveston, Texas, and she—I didn't notice her being drunk when she got on, but it was hot weather and evidently the liquor was too much for her, and when I went into the body of the car she was very much intoxicated and creating a disturbance and talking loud, and I tried to get her ticket from her, and I had to have a scuffle in order to do so. She jerked me clear into the berth in doing that, and I finally secured the ticket, and they wired to Houston to take the woman off the car, that she wasn't in a condition to remain in there. However, in the meantime there was a young lady that suggested she help me handle her, and I was very glad she did. She and I took the woman to the dressing room.

Q. You mean a young lady, some—

A. A passenger on the train, yes, sir, and I apologized to some of the other passengers on the train, told them we couldn't help that, that it was a case of liquor, and we took the lady to the dressing room, and she was going to try to quiet her and later bring her to her berth. And I told her to ring me when she wanted me and I would assist her. And she rang the bell and the porter came to me, I was coming back from the other car, and he told me this lady was ringing, and I went back and found this lady in a terrible condition. She was on the floor and her dress was over her head and in a messy condition. I helped this lady, got her to the berth and got her in there, and this woman

sat on the side of her berth and finally got her to sleep. By the time we got to Houston she was asleep, and the [fol. 444] officers were down there, but since she was asleep they let her go on to San Antonio. She was a manicurist in one of the hotels there.

Q. You pick up this car that comes through Austin that goes to Fort Worth and Dallas? There are two cars set out here. You pick up those, don't you?

A. Yes, sir, about 1:20 in the morning, or 1:10.

Q. You were here yesterday and heard the Pullman porters, both of whom operate on those cars. You heard their testimony, didn't you?

A. Yes, sir.

Q. Have you ever had occasion to eject any visiting passengers who were boisterous and loud? I mean people who were visiting the passengers on the train who were boisterous and loud, when you came through here to pick up those cars?

A. Yes, sir, with those same porters that testified.

Q. What time does your train get in here, Mr. Hadley?

A. Around 1:05 or 1:10. We are due out at 1:20.

Q. That was 1:00 A. M.?

A. Yes, sir, in the morning.

Q. Passengers are permitted to get on the cars who are going to Fort Worth and Dallas, is that right?

A. Yes, sir.

Q. They can get on at 9:30 on up?

A. Yes, sir, and go to bed.

Q. And then when the train, when this train comes by it picks up those two sleepers that are set out here?

A. Yes, sir.

Q. What do you find with reference to the condition of the students at times in those cars?

A. At times I find that the students, especially when the students are traveling, and there are several students in [fol. 445] there talking to the students that are going away, and they are drinking and smoking in the body of the car.

Q. You mean at 1:00 o'clock in the morning?

A. That is right. Sometimes we can hardly get them off there when the train starts, we have a time getting them out of there and keeping them from getting hurt.

Q. Do you ever find that these boys fail to take up the proper transportation of these people riding on the cars?

A. Yes, sir.

Q. Can you cite an instance?

A. On my last trip through here.

Q. When was that?

A. On the morning of the 17th, I believe.

Q. Was that last Friday night?

A. Yes, sir, about that time.

Q. All right, go ahead.

A. When I took the transportation over from the porters I found that in checking it in one of the envelopes, there was three or four or five passes of Mr. Rice M. Tilley's, but neither one of them was a Katy pass, for Katy transportation. In other words, none of the transportation was good on this line or this railroad. And I usually try to check that before it is turned over to the train conductor, although I don't lift it myself. It has caused confusion before, and I try to check it myself. I called that to the attention of the porter and he said that was what he gave him, and I said, "Don't you try to see whether the transportation is good?" And he said he thought he knew. [fol. 446] And I said, "I guess you will have to wake up Mr. Tilley and get his transportation." And Mr. Tilley was in lower one and his wife in lower twelve. And he woke up Mr. Tilley and got his transportation back and got his Katy transportation, and he gave his other transportation back. Other times I find they haven't taken up tickets at all and sometimes they get the wrong portion of a Pullman ticket.

Q. All right, Mr. Hadley, have you ever found any tendency on the part—or can you cite us an illustration in Texas—I believe you were telling us about the one from Amarillo, about the two couples that were attempting to stage a party on your train?

A. Yes, sir.

Q. Tell us briefly about that.

A. Yes, sir. Coming out of Amarillo, I believe it was the Fort Worth & Denver, two men kissed their wives and children goodbye, got on the train. They had two lower berths. They immediately went to the day coach, got two women, brought them back, said they wanted to get a berth for these girls. So I told them I didn't have anything but an upper berth left. The man said, "I will take the upper and give the girls the lower." I said all right. So I sold him the upper berth. But later, as I figure it was possible, they tried to and did get to bed with the women in the

lower berths, not going in the uppers: So I went to the berths and got them out. One man kicked a little, but the other didn't so much. Finally I got this one up in his upper berth and told him it would be a good idea for him to get up there and stay there, and he did. But I sat up that night instead of retiring, going to bed, as I am due to go, and watched and saw that they did not get together.

[fol. 447] Q. All right.

A. Well, they did get back together, but I got them out.

Q. I just want to ask you one more experience. I don't want to burden the Court with this line of testimony, but—

A. I might say, Mr. Morgan, the Pullman Company OK'd my time and paid me for guarding there.

Q. What experience, if any, have you had with elderly women or blind women on the train?

A. Well, I had one out of Dallas.

Q. How long ago is that?

A. I don't remember. It hasn't been so terribly long ago. I don't remember the date.

Q. Mr. Hadley, will you briefly relate that experience?

A. Those things just happen.

Q. Relate to the Court your experience with this elderly blind woman.

A. Well, she was brought to my train and they asked me to look after her. It was some of her people. I don't know whether it was her daughters or relatives or what. And they explained something about her physical disability. They didn't state she was entirely blind, they just said she couldn't see very well. But going through the car the bell rang, and I went to her—to this berth, and I recognized that it was her berth, and I asked her what I could do, and she said, "Is this the conductor?" She said, I believe, "I want the conductor," is what she said, "I want the conductor." So she told me she wanted to go to the rest room, wanted me to assist her to the rest room. I said, "I will be glad to," and I did. I pushed the door open and told her where she could find the toilet, but she couldn't see it to get into it, so I went into the room and opened [fol. 448] the toilet door and had to assist her and have her hand on the bell, I put her hand on the bell and told her where to ring, that I would wait outside for her and help her back to her berth, and she rang and I assisted her back to her berth. She was a very old lady and couldn't see.

Q. Mr. Hadley, how often do the train conductors go through your Pullman cars?

A. On which line?

Q. On any line.

A. Well, on this Katy going out of Denison I lift the transportation for myself and the train conductor and they come back and get it after it has been lifted and take it back up ahead and check it. On the S-P I do the same thing.

Q. By lifting transportation do you mean that you are the one who actually asks the passenger for his tickets?

A. Yes, sir.

Q. That is lifting transportation?

A. I take up the Pullman and railroad transportation on both lines that I operate on.

Q. And the conductor doesn't even collect the passenger fare?

A. No, sir, not on these lines.

Q. And he occasionally goes through the train?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, the Pullman cars are invariably on the back end of the chair cars, aren't they?

A. How is that?

[fol. 449] Q. I say the Pullman, the sleeping cars are on the back part of the train?

A. Yes, sir. Sometimes we have—now and then we have a day coach in between sleeping cars in order to facilitate the shifting or switching of the cars at Waco or Austin or the like. Now and then that is done.

Q. Now, ordinarily the Pullman cars are the rear cars on each train, is that right?

A. Yes, sir.

Q. And those, of course, the Pullman conductor and the Pullman porters are the only ones that have keys to the cars?

A. As far as I know, yes, sir.

Q. That is true in your run, isn't it?

A. I think now and then some train conductor gets ahold of a key. I don't think the Pullman Company furnishes it.

Mr. Graves: What was that you said? I didn't get that.

A. I say I believe now and then some train conductor gets a key, but I don't think that the Pullman Company furnishes it. It is my understanding they don't.

Q. How often on your run, Mr. Hadley, do you have occasion to see a supervisor or someone in authority of the Pullman Company that is your superior officer? How often do you see them on your runs?

A. Well, I might see two or three in one month and then I might not see any for three months.

Q. What is the practice of the brakemen with reference to riding on the back end of the Pullman cars, on your runs?

A. Well, on one run the brakeman rides back there except at stops where he helps the train conductor load and [fol. 450] unload passengers, discharge passengers.

#### Cross-examination.

##### Questions by Mr. Graves:

Q. Which runs are those, Mr. Hadley?

A. Sir?

Q. Which run is that that the brakeman rides in your car on?

A. That is on the lounge car between San Antonio and Denison and Denison and San Antonio.

Q. That car is on the rear end of the train?

A. Yes, sir.

Q. What about this run between San Antonio and Corpus Christi?

A. Well, there are some of them there that are hardly ever back there.

Q. How many cars are there on that train?

A. One car.

Q. One Pullman?

A. Yes, sir.

Q. Mr. Hadley, these incidents that you have related are unusual incidents, or are they typical of the everyday experience of a Pullman conductor?

A. No, I am glad to say we don't have that experience every day, sir.

Q. So when counsel asked you a few minutes ago to just give the Court one instance and you described one—do you have a number of such incidents that you could describe?

A. Oh, yes, sir. If necessary I could go on here and relate you plenty of instances of similar character.

Q. All right, how many have you had of that kind, now, in the last year?

A. Oh, in just the last year?

A. Yes, sir.

[fol. 451] A. I don't know. It wouldn't be so many in the last year, no, sir. I am speaking of in the last fifteen years.

Q. How many have you had in the last five years?

A. Of course, it wouldn't be near as many as it would be in fifteen. We don't try to remember all those things. It is just a part of our duty to look after those things. We try to get them attended to and let them go by. You have to study to bring those things out. It takes thought and study to remember those things.

Q. Can you now remember any other similar incident like that in the entire fifteen years?

Judge McMillan: What are you talking about? He has told about several incidents.

Mr. Graves: I was talking about the one where counsel directed his attention to it and said "please relate one such incident," as though there had been many others. It was the one where he made a young student get out of the berth.

A. Yes, sir, I can.

Q. How many of those can you recall?

A. Right now I would have to think to recall offhand, but any number of them.

Q. Do you think if you would get off and cogitate about it that you could recall some others?

A. Yes, sir, I know I could.

Q. But you can't now?

A. Well, I don't know. I might in a few moments time.

Q. I am asking you to tell about one other.

A. You want me to tell about one other right now?

Q. Yes, sir.

A. Well, coming out of Dallas on this train, this same [fol. 452] 11:00 o'clock Katy, I had a young couple get together, and this man was on a pass, and the girl, the best I remember, she was on a pass too, and I could possibly find her name for you if you want it.

Q. Were they students?

A. Sir?

Q. Were they students?

A. The man was.

Q. The man was a student?

A. Yes, sir.

Q. When was that?

A. They got together on the train.

Q. When was that?

A. That has been less than a year ago.

Q. Can you think of any others?

A. Not offhand, no, sir.

Q. Do you report such incidents to the company?

A. Sometimes I do, yes, sir. Not all the time.

Q. The rules require you to report them, don't they?

A. They do if I have difficulty with them, yes, sir. If I don't have any difficulty I don't know that it is necessary. If the man immediately goes to his space and there is no argument or anything of the kind, that is just kind of a closed incident.

Q. Well, the language of the rule is that you are required to report any unusual incident that happens on the train, is that not correct?

A. Similar to that, yes, sir.

[fol. 453] Q. But some of these incidents you have not reported?

A. That is right, yes, sir. If we reported every incident that happened we would be writing all the time, we never would have any time for ourselves.

Q. Now, then, one of the incidents to which you referred was one where you happened to be in the car ahead and you say the porter came and got you?

A. Yes, sir.

Q. And you went back then into his car?

A. Yes, sir.

Q. And gave it the required attention?

A. That is right.

Q. Now, if an incident should have happened on a train where the porter was in charge and where there was one Pullman car and one passenger car ahead, where would the passenger conductor be, the train conductor?

A. He would be up in the day coach, I suppose, where he usually rides.

Q. He would be in the day coach or Pullman car, one of those two cars, wouldn't he?

A. One of the three cars maybe.

Q. One of the three if there were three cars and one of the two if there were two cars?

A. Yes, sir, unless he was on the ground. If they were stopped he could be on the ground looking after orders, if they were stopped.

Q. Which one of these porters was it that you referred to [fol. 454] here as having found, when you came in here the other night, that he had failed to perform his duty, when you arrived here at 1:20 A. M.?

A. I believe it was Brown back there.

Q. On the Fort Worth car?

A. That is right, yes, sir.

Q. Now, what was that incident that he had failed to take care of?

A. He lifted the wrong transportation for passengers.

Q. That was Mr. Tilley?

A. Rice M. Tilley, that is right.

Q. Who awakened Mr. Tilley?

A. I permitted the porter to do it. He had lifted the transportation wrong.

Q. You say permitted. Didn't you instruct him to do it?

A. Yes, sir.

Q. Why didn't you let him sleep until the next morning and get it then?

A. The train conductor would have come back and get it. It is our instructions to see—I have had train conductors to come back at times prior to that and have us wake the passenger up and get it when the fare was lifted wrong.

Q. On how many occasions have you found beer bottles in the car here when you picked up that connection here at 1:20 in the morning?

A. Oh, I couldn't enumerate those occasions. It don't happen every trip, but it has happened.

Q. Well, it is an infrequent happening, isn't it?

A. I would call it infrequent, yes, sir. It isn't an everyday occurrence. It didn't happen when I was stationed over [fol. 455] here looking after those cars in 1928.

Q. It never did happen?

A. No, sir. I didn't permit passengers to go in and disturb the other passengers.

Q. You have made mistakes yourself?

A. Yes, sir.

Q. On the train, haven't you?

A. Yes, sir, positively.

Q. You have let passengers go from Dallas, Waxahachie, and places like that, to San Antonio when they wanted to go to Houston, haven't you?

A. Yes, sir, I let a passenger here a short time ago, an attorney, do that. He got in the wrong bed and he admitted it was his fault. He signed a statement that it was his own fault.

Q. Let's see about that. I want to know what you did about it.

A. I had a statement. I think Mr. Vronian has it, if you will read it.

Q. He had railroad transportation for where?

A. He had railroad transportation anywhere he wanted to go in the State of Texas, I guess, on the MK-T. He had a pass.

Q. He had a pass?

A. Yes, sir.

Q. He told you where he was going?

A. That is right.

Q. And you sold him a berth?

A. Yes, sir.

Q. A Pullman berth in the last car on the train?

A. No, sir, I did not.

Q. The car that you were then in?

A. No, sir..

[fol. 456] Q. Which car was it in?

A. In the car ahead of the one I was in.

Q. And you told him then where his berth was?

A. I told him, I told him I had turned the light on in the berth and told him what berth he had and what car he had, and I had given him a receipt to that effect.

Q. Instead of his going to his destination, to what point was he carried?

A. He got in bed in the wrong berth. He didn't go up to his car. He got in a berth in the same car he was then in and went to San Antonio.

Q. When you arrived at Waco the conductor that picked up the San Antonio car—the Houston car—called your attention to the fact that there was one passenger shy in that car, didn't he?

A. Yes, sir.

Q. You didn't then check the other car to see whether the passenger that was shy in the one car was in the other car?

A. No, sir. It was my understanding that the passenger was to set up to Waco. He had some schedules, and I had asked this porter Lane back here if the passenger had gone ahead and he told me he had.

Q. As a matter of fact, he had, hadn't he?

A. No, sir.

Q. The passenger had gone ahead and later come back, hadn't he?

A. No, sir, he never did go ahead.

Q. He never did go ahead?

A. No, sir.

Q. Under the rules, Mr. Hadley, it was your duty to check your car, wasn't it?

A. I did check the car before the passenger went to bed.  
[fol. 457] Q. Yes.

A. And put out my call card. The car was checked on arriving at Waxahachie where this passenger got on, and then I worked my passengers afterward.

Q. If this conductor found that he was shy one passenger and called your attention to it and you had checked your—

Judge Sibley: Is there any use trying that out? He says he has made mistakes.

Mr. Graves: If I may, Your Honor, I would like to ask this one question.

Judge Sibley: All right.

Q. If you had then checked the other car, the San Antonio car, you would have discovered that the passenger was in there?

A. Sir?

Q. I say you would have discovered that the passenger was in there?

A. If I had rechecked this other car I would have found the passenger in there, that is correct.

Judge Sibley: I don't want to be impatient, gentlemen, but these are questions that an intelligent person could answer easily, and it doesn't seem necessary to load the record up with them.

(Witness excused.)

W. L. BEAMER, a witness for the defendants, was sworn and testified as follows:

Direct examination.

Questions by Mr. Rotsch:

Q. What is your name?

A. Beamer, W. L. Beamer.

[fol. 458] Q. How old are you, Mr. Beamer?

A. Sixty-one.

Q. Where is your home?

A. Denison.

Q. How long have you lived in Texas?

A. Forty-one years.

Q. And where were you born?

A. Georgia.

Q. Now, who are you employed by?

A. The MK-T Railroad.

Q. In what capacity are you employed now?

A. Conductor.

Q. How long have you been working for the MK-T Railroad, altogether?

A. It will be thirty-nine years the first day of April.

Q. When you first went to work for the MK-T what job did you have?

A. Well, I had a job as check clerk and shipping clerk in the store department, and later timekeeper for the mechanical department.

Q. How long have you been a conductor?

A. I was promoted in 1907.

Q. Now, you haven't been with the MK-T continuously, since you went to work, have you?

A. Well, I have held my rights continually. However, I was off from March, 1923, until March, 1935, as salaried chairman for the Order of the Railway Conductors for the Katy Lines.

Q. What do you mean by salaried chairman for the Order of Railway Conductors?

A. They have a chairman for the system on a salary who [fol. 459] handles schedule matters and agreements.

Q. You did that work then for approximately twelve years?

A. Yes, sir.

Q. Now, what is your run? That is, on what train or trains do you work on now?

A. I am in what we call a pool out of Denison, between Denison and Dallas and Denison and Fort Worth.

Q. Where do those—you mean you run one time from Denison to Fort Worth and back and another time from Denison to Dallas and back?

A. The way we start out is Denison to Dallas. We go down of a morning and stay in Dallas all day and come back

that night on the Blue Bonnet. The next day we come to Fort Worth on the Blue Bonnet and go down of a morning and come back that evening, and the next day, the third day, we go down to Fort Worth on the Katy Flyer, or 25, and back, in continuous service, on train 24, and the fourth day we lay over. There are four of us in that pool.

Q. Now, are there any Pullman cars on any of those trains that are known as porter in charge cars that don't have Pullman conductors?

A. Yes, sir, on the No. 11, of the Blue Bonnet South on the Fort Worth side.

Q. Do the other trains that you operate on have Pullman conductors, though, in charge of the Pullmans?

A. Yes, sir.

Q. Have you ever worked on any other runs as a train conductor in which there was a Pullman car without a Pullman conductor in charge of it, a porter in charge run?

[fol. 460] A. I have worked some between Wichita Falls and Whitesboro where no Pullman conductor was on the car, just a Pullman porter.

Q. That was before your present runs?

A. It was during the time that the man over there was off and I took his vacancy.

Q. Now, are the Pullman cars fixed so they can be locked with a key?

A. Yes, sir.

Q. Who carries the key to those Pullman cars?

A. The Pullman porter and the Pullman conductor, I suppose.

Q. You don't have a key?

A. I did have one and they made me give it up.

Q. Do you recall any instance of the car being locked by the Pullman porter so that you couldn't go back through the Pullman car?

A. Yes, sir. Occasionally in Denison where they are shifting the train porters, probably some of them are off duty and those that are off duty will lock their cars so people can't get in and out, and I have found those doors, those cars locked.

Q. That confines you, then, up to the part where the chair cars and coaches are and the baggage car?

A. Yes, sir, except you can punch a button and they will come and let you in.

Q. But you have to depend on the Pullman porter coming and unlocking the door and letting you in?

A. Yes, sir.

Q. Now, have you observed these porters in charge to some extent on your run, going back there occasionally?

A. Not very closely. I generally go back and do my work.  
[fol. 461] Q. Then have you observed the cars and the conductors where they have a conductor in charge, a Pullman conductor, I mean, have you observed them and their work?

A. I have worked with them, yes, sir.

Q. Now, do you recall any instances, particularly on that run through Whitesboro up towards Wichita Falls, of lady passengers being on the car where there is just a porter in charge and something unusual occurring that attracted your attention?

A. I remember on one occasion we didn't have any passengers out of Wichita Falls, and when we got to Henrietta we picked up a woman. I went back before we got to Nocona and got her transportation. The porter waited for me, and he got his transportation at the same time. I went to the rear end of the car and when I came back she asked me if that was all the passengers that was on the car, and I told her that she was the only passenger.

Q. You were the train conductor?

A. Yes, sir.

Q. All right.

A. And she spoke about the business and one thing or another, and she said she believed she would rather ride over ahead if she was going to be back there by herself, and I told her there was probably room over there for her in the chair car. And I worked on ahead all the time, and leaving Nocona I noticed she was over in the chair car and stayed there until we got nearly to Whitesboro.

Q. Did she express herself as being afraid to be back there in the Pullman with the porter?

A. Not in that way. She said it was rather lonesome [fol. 462] back there, looked rather lonesome. She made no complaint about that.

Q. Now, during that interval when you were working as chairman for the Order of Railway Conductors, do you remember an instance similar to that of a lady being on a car where there was a porter in charge?

A. Yes, sir.

Q. Tell the Court about that incident.

A. Well, coming out of Oklahoma City when they had the car that set out—that is, it built up the train at Oklahoma City—the train conductor or train crew went on duty about 11:00 o'clock. The Pullman porter opened up the Pullman car at 9:00 or 9:30 and loaded passengers for Muskogee, or down the line. So I went down and got in that car going to Muskogee and when I went in there there was a lady sitting up in the front end of the car and I sat down in the rear end of the car. The porter was on the outside when I went in, and of course he came in and went to making down berths. He made down two or three and the lady got up and looked around a little and she came back and introduced herself to me and told me she was going to Muskogee and wanted to know where I was going and all about me, and then she apologized for trying to form my acquaintance or make the inquiry she had made, but she said she was planning to go home but didn't like to go to bed with a negro porter there, and she went out then and went over to the depot, and I went to bed, and the next morning I saw her get off at Muskogee, and I did too, but this other passenger was all.

Q. Now, Mr. Beamer, basing your answer that we are now asking for on your experience, is it your opinion that [fol. 463] it is necessary for the safety and welfare of the passengers on a sleeping car that there be a Pullman conductor in charge of the car in addition to a Pullman porter?

Mr. Graves: Now, just a minute. May it please the Court, we object to his expressing an opinion as to the ultimate fact to be decided by the Court.

Judge Sibley: That looks like it is objectionable. Do you wish to argue it?

Mr. Rotsch: No, we don't wish to argue it.

Judge Sibley: Exclude the evidence.

Q. Mr. Beamer, have you ever regulated a ventilating system in a Pullman car when you were on the train as train conductor?

A. No, sir.

Q. Do you know anything about the ventilating system of Pullman cars?

A. No, sir.

Q. Do you exercise authority over the ones in charge of the Pullman car, that is, the Pullman conductor or the

porter in charge, whichever it happens to be? And by that I mean what do you actually do? Do you give them orders, tell them how to do, or do you just leave them to operate as they see fit? Tell us about that.

A. I have never instructed a Pullman employee to do anything. I would if they were to call on me to assist them in ejecting a passenger or anything of that nature.

Q. Well, do you, as far as the actual operation is concerned, do you supervise the Pullman car or do you leave the supervision of the Pullman car entirely up to the Pullman employee?

A. Inside of the car I leave it up to the employees.  
[fol. 464] Q. And do you go on the basis that that is your job and you don't butt in on it, is that right?

A. Yes, sir, that is right. But I would like to qualify that statement a little.

Q. All right.

A. If it is permissible. It has been stated here that a conductor is a captain of the boat from the Pilot to the rear end of the train, which is always considered true. But that applies, as I understand it and always have, to the operation of the train and the conduct of the employees on the train. Now, when it comes to the engineer, when it comes to the operation of the train, we try to cooperate with him, or in other words, at times instruct him what we want him to do. When it comes to the mechanism of the engine, telling him how to operate or run that engine, we don't do that, and if he has a man failure we don't report him and he doesn't report it to us. The same way with the mail and express men and the dining car system. We don't go in the dining car and give them any instructions at all. That is a separate department. And if one conducts himself unbecoming or anything of that kind I would try to handle it, and the same way is true with the Pullman people. We haven't got any book of instructions or rules or we don't know anything about their rules or instructions, but we do know about what we would do or try to do in case of improper conduct or if they were to call on us to help them.

Q. Mr. Beamer, you have observed the porters and Pullman conductors and those porters designated as porters in charge. Do you have an opinion on whether you would have a preference as to who you would place members of your

[fol. 465] family in charge of, particularly the women members of your family, if you were sending them on a trip?

A. Well, I would say this, if I was to go down to a place to send any members of my family, which is four daughters and a wife, and there were two trains standing there ready to go the same place and one had a Pullman porter in charge and one had a Pullman porter and conductor, I would put them on the one with the Pullman conductor.

Q. The one with the conductor?

A. Yes, sir.

(Witness excused.)

(The Court then, at 12:05 p. m., Tuesday, February 20, 1940, recessed until 2:00 p. m., of the same day, at which time the following proceedings were had:)

~~[fol. 466]~~      Tuesday, February 20, 1940

Afternoon Session, 2:00 o'clock

W. L. BEAMER, a witness called by the defendants, resumed the witness stand, and testified as follows:

Cross-examination.

Questions by Mr. Graves:

Q. You are an M. K. & T. Railroad conductor?

A. Yes, sir.

Q. A passenger conductor?

A. Yes, sir.

Q. Do you have a copy of the book of rules governing the operation of trains?

A. I have one at home, yes, sir.

Q. The company has furnished you with one?

A. Yes, sir.

Q. And they furnish the same rules to all conductor, do they not?

A. Yes, sir.

Q. You endeavor to enforce those rules on your train?

A. Well, yes, sir; we try to carry them out.

Mr. Graves: That is all.

(Witness excused.)

C. E. LOWERY, a witness called by defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rotsch:

Q. What is your name?

[fol. 467] A. C. E. Lowery.

Q. How old are you?

A. Sixty-three.

Q. By whom are you employed?

A. M. K. & T. Railroad Company.

Q. How long have you been an employee of the M. K. & T. Railroad Company?

A. My service record shows from 1892.

Q. Continuously?

A. Yes, sir.

Q. Up to the present time?

A. Yes, sir.

Q. What position and line of work are you in now for the M. K. & T. Railroad?

A. Passenger conductor.

Q. How long have you been a passenger conductor?

A. Approximately twenty years.

Q. By "passenger conductor", you mean train conductor?

A. Yes, sir.

Q. Where do you live?

A. San Antonio.

Q. What run are you on at the present time as a passenger train conductor?

A. North-bound I leave San Antonio at 1:30 in the afternoon and arrive at Waco at 7:00 o'clock; and returning, I leave Waco at noon and arrive at San Antonio at 4:30.

Q. Your run consists of San Antonio to Waco, and return?

A. Yes, sir.

Q. On that run are there any Pullman cars on your train?

[fol. 468] A. Yes, sir; north-bound there is one Pullman car; south-bound there are regularly three.

Q. Is there what is termed a porter in charge any time on that Train? That is is there a time when there is no Pullman conductor, but only a porter in charge of the car?

A. That would be the north-bound train from San Antonio to Waco.

Q. This north-bound train is a local train, is it?

A. Yes, sir.

Q. It stops at the smaller places?

A. Yes, sir.

Q. Tell the Court what your duties are and what you actually do when the train stops at these stations.

A. Well, if the brakeman is on the rear end, I work the trap for the white people to get on and off the train, and I watch the loading and unloading of the mail, baggage and express, and either authorize or give the proceed signal for the train.

Q. You say you watch the place for the white people to get off and on the train?

A. Yes, sir.

Q. How many cars are there on that train that carry white people?

A. The chair car is exclusively white, and the day coach is a "Jim Crow" car—that is, it has two compartments, one for white and one for colored.

Q. One for white and one for Negroes?

[fol. 469] A. Yes, sir.

Q. And there is a Pullman in addition to that?

A. Yes, sir.

Q. Is the Pullman on the rear of the train?

A. Well, not always. At the present time it rides on the rear.

Q. When you are watching the people get on and off, do you stand up by the chair car and coach where they get off?

A. I am usually close to the mail car.

Q. How far is that from the entrance where the people get on and off the Pullman car?

A. Well, possibly the Pullman car would be the fourth car back.

Q. Who watches and takes care of the people who get on and off the Pullman car on your train?

A. The porter, I notice, usually puts his box down and loads and unloads the passengers.

Q. When you make stops at small places like Georgetown, —that is one place you go through?

A. Yes, sir.

Q. And other towns, and somebody gets on the Pullman car, do you know of your own knowledge when they get on that Pullman car?

A. Not always.

Q. You mean that you are so busy at the front end of the train you can't watch all of it?

A. I would not pay so close attention to that as to the day coaches, because I expect the Pullman employees to take care of that.

Q. When that train starts, you don't know whether or not someone has gotten on the Pullman car, or not?

[fol. 470] A. No, sir; not positively.

Q. Now, what do you do, and what are your actual duties when the train starts and is in motion from one town to another town?

A. I pass through the coaches always to see if any passengers got on,—usually on information from the brakeman, if he works the trap. If he does not, I am in position to know who got on there.

Q. Do you supervise the chair cars and the coaches where passengers ride,—that is, the cars where passengers ride, other than the Pullman, personally, and go through them quite often?

A. Yes, sir.

Q. Tell the Court whether or not you personally supervise the Pullman car, or do you leave that up to the Pullman employees?

A. Well, I figure the passenger there is the Pullman Company's passenger, and it is their business to look out for them up to the point where something unusual might occur.

Q. Are the Pullman cars fixed so that the door can be locked?

A. I believe there is a night latch. You can open the door with the knob from the inside, but not from the outside.

Q. It takes a key to open it from the outside when it is locked?

A. Yes, sir.

Q. Do you carry a key?

A. No, sir.

Q. Have you known of instances when it was locked so that you could not have gotten in there if you had wanted to get in there quickly?

[fol. 471] A. A few times I have found them locked when I didn't expect it. I have authorized them to lock the door.

Q. Do you go back there if they come up—if some of the Pullman employees come up to the front of the train and ask you to go back there because of some unusual circum-

stance, do you make a special trip and go back to the Pullman car?

A. Yes, sir.

Q. Do you recall any instances, or did it ever happen that you went back there because of the misconduct of passengers, particularly between men and women?

A. Yes, sir; in several cases in the past ten or fifteen years.

Q. Don't give all of them, but pick out one instance as to misconduct between men and women, and tell the Court.

A. Well, the most recent case, I think, was something like seven or eight months ago the Pullman conductor came over to me and told me that there was either a man or a lady in the wrong berth, and we went back together and pulled on the curtain of the berth and asked if there were two passengers in there, and the man said there was, and I said, "I want the other ticket," and he said, "I belong in the other berth across the aisle."

Q. Was that a man and wife?

A. They were riding on government orders under different names and had purchased separate berths.

Q. What did they do then?

A. He readily crossed over, and I heard no more about it.  
[fol. 472] Q. He got out of the berth he was in?

A. Yes.

Q. Now, your line that you run on from San Antonio to Waco goes through Austin, which is the capital, and where the University of Texas is located?

A. Yes, sir.

Q. Do quite a few students ride on your train?

A. Well, at the opening and closing of school and during the football season, quite a number.

Q. Before I go into this question of the students, let me ask you,—do people who are intoxicated by excessive use of liquor sometimes get on your train?

A. Quite often.

Q. Does that give trouble to the people in charge of the train?

A. There is a good deal of difference in drunks. Some are good natured and jolly fellows, and others want to fight and bother other people.

Q. State whether or not people in general have the respect for Pullman porters that they do for the train conductor and the Pullman conductor?

A. My opinion is I don't think so.

Mr. Graves: I think that is a matter not within his province, and we object to it on that ground.

Judge Sibley: If he knows about it, I guess he can tell it. We all have our ideas about it.

Q. What was your answer?

A. In my opinion, they do not.

Q. You don't think they have the respect for the Pullman porter that they do for the Pullman and train conductors?

[fol. 473] A. No, sir.

Q. Do you recall any instance where persons showed their disrespect to Pullman porters to such an extent that the Pullman porter had to leave the car?

A. Well, I don't know whether you would call it disrespect or not. I had one drunk run the porter through six sleepers and the chair car where I was, and asked for help.

Q. When was that?

A. About a year ago.

Q. Where was this Pullman porter stationed at the time?

A. I believe he was in the rear car.

Q. You were up in the front part of the train?

A. Yes, sir.

Q. What did you do when he ran up to you, and what was the situation?

A. I had advance notice before that there was some trouble, because the Pullman conductor had told me that he and the porter had to pull this man off the brakeman, but he said he thought the trouble was settled. I did not see the man, but an hour or so after I left Austin, the porter ran into the coach where I was, and said there was a man back there raising a row and said he was going to kill him, and immediately I looked up, and the man was right behind him.

Q. Did you prevent the man from killing the porter?

A. I told the porter to go back and lock his door, and I kept the man in the car where I was.

[fol. 474] Q. It was a white man?

A. Yes, sir.

Q. What time of the night was this?

A. It was 2:00 or possibly a little later.

Q. In the morning?

A. Yes, sir.

Q. Was the train carrying a Pullman conductor at that time?

A. Yes, sir.

Q. But was that conductor on duty, or was he taking this interval when they are off duty, and he was asleep on the train?

A. He was off duty at that particular time.

Q. And the one on duty was just the Pullman porter on the Pullman car?

A. That is the way I understand it.

Q. Now, do you have any trouble from the students? Something was said about students.

A. Well, they are rather boisterous, I would say, more in a mischievous way, and very destructive, that is, in crowds.

Q. In addition to the University of Texas students, there are the Baylor students out of Waco?

A. And the S. M. U. and T. C. U. students.

Q. The S. M. U. students out of Dallas and the T. C. U. students out of Fort Worth?

A. Yes, sir.

Q. You haul quite a few of those on your run?

A. Yes, sir.

[fol. 475] Q. During the holiday seasons how many students are sometimes on your train?

A. It varies from 150 to 300.

Q. You mean there are sometimes as many as 300 on the chair cars and coach cars?

A. We have sometimes four or five or six coaches and chair cars. Sometimes we have as high as twelve or fourteen cars under those conditions.

Q. When you get several coaches or chair cars like that and an extra number of students like that on account of the rush or holiday season, how much actual time and actual supervision do you devote to the Pullman cars between Waco and Austin or Austin and Waco?

A. Well, with crowds like that and that length of train, I can't give it much attention.

Q. How many times do you get back there going from Austin to Waco?

A. I might not go back any more after I take up the Pullman transportation, under those conditions.

Q. You mean you only get back there one time during that trip?

A. That would be possible during a trip of that kind.

Q. How far is that trip?

A. 109 miles.

Q. How do these students get along with the Pullman porters?

A. As a matter of personal knowledge as to what might occur between the two of them, I don't know.

[fol. 476] Q. Now, is there any equipment or mechanism or machinery on the cars that some of these students sometimes meddle with when they have a mischievous mood on?

A. Well, they will take the fuses out of the lights and take the globes out of the lights; and the worst thing they can do is set the emergency brake by pulling the cord that runs the entire length of the train.

Q. Does it take much of your time and attention to see that that is not done?

A. There is not much we can do about it until it happens.

Q. Can that happen on the Pullman car as well as on the chair car?

A. Yes, sir; there are emergency cords on all of them.

Q. That cord runs all the way the length of the train?

A. All the way the length of the chair cars and coaches. I am not sure about the Pullman, but there is a cord attachment in there which operates the emergency valves.

Q. Do you know of any instances, of your own knowledge, where some mischievous students interfered with the machinery and created quite a bit of trouble?

A. That practically happens on every train where a large bunch of them ride.

Q. Give us a specific instance.

A. I was on the regular train out of here at 1:20, and they were running a special just ahead of us, and they had been pulling the air on the train and stopping it a number of times. Of course, we did not know how far they were ahead of us at that particular time, and in one place [fol. 477] they stopped the train, and we came near running into them.

Q. How close did you come to running into them?

A. We were not more than ten feet from the rear of the train when the engine stopped.

Q. Now, do you think that a Pullman conductor on sleeping cars where there is only one sleeping car on the train serves any purpose?

A. Well, he has his paper work and the supervision of anything that goes on back there, and the car and passengers all come under his duties.

Q. Do you think a Pullman conductor under those circumstances is necessary?

A. I think it would be much better.

Q. From what standpoint?

A. I would feel like I had less responsibility back there,—that the situation would be better taken care of.

Q. And the safety of the passengers and the train better taken care of?

A. Yes, sir; that is my opinion.

Q. Let's get back to what you do in actually supervising a Pullman car. When you do get back finally to the Pullman car, if you see anyone smoking there, would you take it upon yourself to have them quit smoking?

A. No, sir.

Q. You don't take that responsibility?

[fol. 478] A. No, sir.

Q. Has a Pullman porter ever called your attention to drinking and smoking and incidents like that in the Pullman car? I mean except where it got so bad they run the Pullman porter out of the car.

A. You mean particularly smoking?

Q. Yes.

A. I never had any employee of the Pullman company complain of passengers smoking to me and ask me to stop it.

Q. Has a Pullman porter ever called your attention where there is a Pullman porter in charge and no conductor, when they have any misconduct of passengers, except in an instance where he is actually run out of the car—has he ever called you back?

A. It has only been about a year where I have been working where there was not a conductor in charge, and that was a daylight run, and a daylight run there is lots less drinking than on night runs.

Q. If there has been any misconduct in violation of the rule, where the Pullman porter is in charge and there is no conductor, he has not called it to your attention, but it has just continued without your being called back there?

A. If there has been any, I didn't know it.

Q. Do you take it upon yourself to go back and make a sanitary inspection of the Pullman cars?

A. No; I figure that that is under the jurisdiction of the Pullman Company and that they will look after it; and they are under my direction the same as the baggage man or [fol. 479] the mail clerk or the engine crew, as particularly applied to their conduct, but not as to the technical work.

Q. Do you go back there and regulate the heat and ventilation?

A. No, sir.

Q. You leave that up to the Pullman employees?

A. Yes, sir.

Q. How many employees are there on the train that you operate on?

A. Well, north-bound, it would be one Pullman porter, myself, a brakeman, and train porter. That is the operating crew besides the engineer and fireman. Of course, there are the dining room employees, the baggage man, and the mail clerk.

Q. On the chair cars the ones that attend to the passengers are the train conductor, the brakeman, and the train porter?

A. Yes, sir.

Q. The train porter, an M. K. & T. employee, as well as the Pullman porter?

A. Yes, sir.

Q. And there is one chair car and one coach that has compartments for colored and white people together?

A. Yes, sir.

Q. And then on the Pullman car where there is a porter in charge only, on your run there is just a porter in charge?

A. Yes, sir; that is right.

Q. How many passengers ride in the Pullman cars both ways on your train?

[fol. 480] A. Well, it is hard to say what the average would be; but I take it out of Austin in the last few months it has been running from 10 to 28 in one car. I don't know what the general average would figure up.

Q. Now, one other point. Tell us the accommodations and the equipment in the chair car on the present M. K. & T. train that you operate on.

A. Well, we have chair cars that are practically new, and I would say were the last word. There are inclined chairs with plush upholstery, and a ladies' smoking room in one

end and a men's smoking room in the other, and running water, and tables to put up between the seats on which they serve their meals.

Q. The meals are served in these chair cars?

A. Yes, sir; we furnish them pillows day and night on request free.

Q. Now, this is not the Pullman, but the M. K. & T. chair car?

A. Yes, sir.

Q. Is it air conditioned?

A. Yes, sir.

Q. How does that compare with the Pullman car?

A. For daylight travel I would prefer it to the Pullman car.

Q. Is the physical equipment as comfortable?

A. The arrangements of the seats are different, but I should think more comfortable.

Q. In the chair cars?

A. Yes, sir.

Q. Nicer seats and nicer equipment?

[fol. 481] A. Yes, sir.

Q. What does the Pullman car have that the chair car does not have?

A. Well, they have magazines and writing paper, and some of the lounge cars that the Pullman passengers use are equipped with radios.

Q. That is all you can think of additional that they have that the chair cars do not have?

A. I don't know of anything else.

Q. Then there is the train conductor, the brakeman, and the train porter in charge of the chair car?

A. Yes; we are all up there.

Q. Were you served with a subpoena to come up here and testify?

A. Yes, sir.

Mr. Rotsch: That is all.

Cross-examination.

Questions by Mr. Graves:

Q. You have a copy of the railroad rules, have you not?

A. Yes, sir.

Q. You endeavor to see that the rules are complied with on your train?

A. Well, not absolutely.

Q. You don't try to see that they are complied with?

A. Under certain conditions I would be rather lenient in the application of certain rules.

Q: Do you or not endeavor to comply with the rules in the way that the company construes the rules and attempt to have them carried out?

[fol. 482] A. I would try to comply with them in the way that they would approve of.

Q. Now, in answer to a question a moment ago, you said that in the chair car of the train, there was the conductor, the brakeman, and the porter in charge?

A. We are working on that end of the train. I am in charge of the train.

Q. You are in charge of the whole train, are you not?

A. That is right.

Q. On this afternoon train that passes through here at 3:55 going north to Dallas and Fort Worth, that is the train that you are running on now?

A. Yes, sir.

Q. It leaves San Antonio when?

A. 1:30 in the afternoon.

Q. Who takes up the transportation of the passengers in the Pullman car in that train?

A. I take up the transportation—the railroad transportation. The porter takes up the Pullman transportation.

Q. You are together when that is done?

A. As a rule, we work together, yes, sir.

Q. So that when the train stops and a passenger enters the Pullman car, do you go back there then and get his ticket?

A. If I knew he was on there, yes, sir.

Q. How do you happen to find out?

A. I would expect the porter or brakeman or somebody to tell me that he was back there. In the absence of that, I would expect the Pullman porter to bring the ticket or notify me.

[fol. 483] Q. The Pullman porter?

A. Yes, sir.

Q. If a passenger got on your train at San Marcos, or Georgetown, or Austin, you would not know about it un-

less either the brakeman or the Pullman porter came up and told you about it?

A. En route I would go back and check with him to see if our lists corresponded. That is our instructions. Either with whoever is in charge or the conductor. Our instructions are to check frequently to see that we are together on the number of passengers in the Pullman.

Mr. Graves: That is all.

Mr. Rotsch: That is all we have.

Mr. Morgan: We have a large number of witnesses who have not been here before. Shall we have them all sworn at the same time?

Judge Sibley: I wish you would; it will save time.

(Thereupon witnesses were sworn.)

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Mrs. H. B. SHANK, having been called as a witness by intervenors, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. What is your name?

A. Mrs. H. B. Shank.

[fol. 484] Q. Where do you live?

A. Fort Worth.

Q. What business is your husband engaged in?

A. In the general insurance business.

Q. Have you any children, Mrs. Shank?

A. I do.

Q. How old are they?

A. They are now eight and ten. Last year they were seven and nine.

Q. Both little girls?

A. Yes; they are.

Q. Do you have occasion to travel on the Pullman trains?

A. Yes, sir, I do.

Q. Do you do that extensively?

A. Yes, sir, I do.

Q. Have you had occasion recently to go to the western coast and to the eastern coast a great deal on Pullmans?

A. Yes, sir.

Q. When you travel on the Pullman car, do you realize that you are required to pay an additional charge to the railroad company of at least one cent per mile, and then in addition to that you pay for the privilege of riding in the Pullman car; you understand that?

A. Yes; I do.

Q. Over and above a charge that is made for the privilege of riding in the chair car?

A. Yes; I do.

Q. Now, when you have occasion to use a Pullman car, [fol. 485] you expect to find a Pullman conductor on the train?

A. Yes; indeed, I do.

Q. If you had occasion to use the Pullman where there was no Pullman conductor in charge of the train, but only a porter in charge of the Pullman, would you ride on the Pullman?

Mr. Graves: In order to be consistent, we make the objection that that is not the criterion by which any issue in this case may be decided, and we object to it on that ground.

Judge Sibley: I really do not know what the Railroad Commission's function is about these Pullman matters. It has been indicated that some court has ruled that they do not have any. If that is the law, it puts this case in one shape; but if they have the right to regulate the service on a Pullman, I suppose what the public wants and demands might have some relevancy. I am unfortunately not familiar with your law.

Mr. Graves: Of course, that is a disputed issue.

Judge Sibley: Maybe we had better hear the evidence, and see what we will do with it afterwards.

Q. The question was, would you ride on the Pullman car if only a Pullman porter were in charge of the car?

A. I don't think so. I don't know that that has been the case, but if it has, I certainly would not have ridden on the Pullman car with only a porter in charge if I had [fol. 486] known it.

Q. If you should have occasion to send your children on the train, to whom would you commit those two little girls for safe transportation?

A. I would put them in charge of a conductor.

Q. You mean a Pullman conductor?

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A. The Pullman conductor, yes, sir, on the Pullman car.

Q. Would you think the little girls are safer in charge of a Pullman conductor than they are in charge of a Pullman porter?

A. I would expect them to be..

Mr. Morgan: That is all.

Cross-examination.

Questions by Mr. Graves:

Q. You are a resident of Fort Worth, aren't you?

A. Yes, sir.

Q. You are a good friend of Mr. Morgan's?

A. Yes, sir; I am.

Q. The attorney in this case?

A. Yes, sir.

Q. You came to the Railroad Commission hearing at his request?

A. Yes, sir; I came to the Railroad Commission hearing at his request.

Q. And also to this trial?

A. Yes, sir. I am very pleased to come at his request.

Q. Are you a native of Texas?

A. I am.

Mr. Graves: That is all.

(Witness excused.)

[fol. 487] MRS. R. P. LIGHTFOOT, a witness called by intervenors, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. State your name.

A. Mrs. R. P. Lightfoot.

Q. Where do you live?

A. 2402 Rio Grande Street, Austin, Texas.

Q. You live here in Austin, Texas?

A. Yes, sir.

Q. Are you the daughter of Judge Smith of Fort Worth?

A. Yes, sir.

Q. I believe you were born in Waxahachie; is that correct?

A. Yes.

Q. Have you had occasion to ride on the trains—the Pullman cars in particular?

A. Yes; I went to school in the north, and lived in the north a good many years, and commuted back and forth a good deal.

Q. Did you in your experience in commuting on Pullman cars, did you have occasion when you and your children were particularly in need of the service of a conductor?

A. When I was a young woman, I had a baby very, very ill on a train,

Q. Where were you going then?

A. To Chicago.

Q. From where?

A. From Fort Worth.

Q. You got on the train at Fort Worth?

[fol. 488] A. Yes, sir.

Q. Your baby became ill?

A. Yes, sir.

Q. Whereabouts was that?

A. He became slightly ill about through Missouri or about the top of Oklahoma.

Q. How old was the baby?

A. He was still a baby, just toddling around.

Q. What did the Pullman conductor do to assist you?

A. The doctor said the child would never have lived if it had not been for him.

Q. What did he do?

A. He sent the porter for hot water and put hot applications on the child, and then when the child looked like he was dying, he gave it artificial respiration and telegraphed ahead for a doctor to be in the St. Louis yard to take charge of it.

Q. You say that he did administer artificial respiration?

A. Yes, sir.

Q. Did he stay in the compartment or berth with you?

A. Yes; he stayed right by my side until the doctor had relieved him of the child, and he also held the train until the medicine could get there.

Q. Was that at your request or your suggestion?

A. I was too frightened to know. The Pullman conductor did that for me.

Q. And you think the service he rendered to you probably saved the life of your baby?

[fol. 489]. A. The doctor said so.

Q. Do you think a Pullman porter could have done the same thing for you?

A. Well, I thought I was pretty well equipped to attend to my child, but I was not; so I would not think a porter would be. This man knew more than I did.

Q. You live out here by the University, do you not?

A. Yes.

Q. You have occasion to see University boys and girls a great deal?

A. I have been here five years.

Q. You have a boy in school here?

A. Yes.

Q. Do you think the boys and girls pay much attention to a Pullman porter?

A. Well, that is hard to say. There are certain classes of children, as well as porters; but an obstreperous child does not pay any attention to anyone, unless they know it has authority; and I shouldn't think they would pay much attention to someone whom they had been taught from infancy that they did not have to pay attention to.

Q. If you had occasion to ride on a Pullman car, would you feel safer if you had a Pullman conductor in charge than if you only had a Pullman porter in charge?

A. I would feel very much safer.

Mr. Morgan: That is all.

Mr. Graves: No questions.

(Witness excused.)

[fol. 490] Mr. Morgan: We would like to have Miss Betty Johnson, please.

MISS BETTY JOHNSON, a witness for defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. Miss Betty, where is your home?

A. Los Angeles, California.

Q. Are you a student now in the University of Texas?

A. Yes, I am.

Q. How many years have you been there?

A. This makes the fourth year.

Q. Well, you are a graduate, then; you are a senior this year.

A. Yes, I am.

Q. Miss Johnson, have you had occasion to ride on Pullman trains a great deal?

A. Yes, sir.

Q. How often do you go to and from California from Texas?

A. Usually about twice a year.

Q. When you do this traveling, do you go by Pullman car?

A. I have most of the time.

Q. Miss Betty, when you do travel on a Pullman car, do you realize that you are required to pay *an addition* to the train fare an additional one cent per mile and then an addi- [fol. 491] tion to that for riding on the Pullman?

A. Yes, sir.

Mr. Graves: It is an immaterial matter, Your Honors, for this purpose, and I am sure counsel does not want to misrepresent the record at all, but as a matter of fact, the basic differential is one cent between three cents and two cents, but those are merely basic rates, and it doesn't mean that in every instance or in the majority of instances that the differential is one cent per mile.

Judge Sibley: It is probably really competitive at the bottom.

Mr. Graves: Yes, sir, that is correct.

Judge Sibley: All right, go ahead.

Q. Now, Miss Johnson, in riding these trains have you ever in your experience had occasion for some of the passengers on the train to make advances towards you?

A. Yes, sir, I have.

Q. To whom did you look to for your protection in such an event?

A. I went to the Pullman conductor.

Q. Have you in your experience in riding on Pullman trains, Miss Betty, witnessed drinking on the part of passengers on the cars?

A. Yes.

Q. Has that been considerable amount or just a small amount?

A. A great deal.

Q. When you get on the Pullman car, Miss Betty, to whom do you look for your safety and protection?

[fol. 492] A. Well, directly, I look to the Pullman conductor.

Q. Well, do you look to the Pullman conductor or do you look to the Pullman porter?

A. No, I don't look to the Pullman porter; he merely helps me.

Q. What do you expect the Pullman porter to do for you, Miss Betty, when you get on the train?

A. Well, I expect him to make the bed, to help me with my bags, putting them in the train and out of the train and to help me—if I happen to be in an upper berth to help me get up to the upper berth.

Q. Well, for any other service on the train to whom do you look, then?

A. To the Pullman conductor.

Q. Miss Betty, would you feel as safe on the train if there is only a Pullman porter in charge of the train, as you would if there was a Pullman conductor?

A. No, I don't think I would.

Mr. Morgan: That is all.

Mr. Graves: That is all.

Mr. Morgan: By the way, one question, Miss Betty.

Q. Do you say you did encounter this drinking and improper advances to you on more than one occasion or just one?

A. Just once.

Q. What did you do?

A. Well, I didn't know what to do at first; it was about three years ago when I was a freshman here, and the only thing I could think to do was to go to the Pullman conductor [fol. 493] and ask him to have the men stop drinking or else retire to another place to do so.

Mr. Morgan: All right. That is all.

(Witness excused.)

Mr. Morgan: Mrs. Vardell, please.

MRS. PAT VARDELL, a witness for defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. Your name is Mrs. Pat Vardell?

A. Yes.

Q. You live here in Austin?

A. Yes, I do.

Q. How many children do you have, Mrs. Vardell?

A. I have two.

Q. Have you ever had occasion to send those children when they were at a tender age by train?

A. I did; I sent them to Mississippi from Fort Worth.

Q. To whom did you commit those children for safe transportation?

A. To the Pullman conductor.

Q. How old is your little girl now, Mrs. Vardell?

A. She is 13 now.

Q. If you had occasion to send her to any point across Texas on a Pullman car to whom would you commit her for safe transportation?

[fol. 494] A. To the conductor.

Q. Would you send her if there were only a Pullman porter in charge of the cars?

A. I don't think I would.

Q. If you are traveling on a Pullman train yourself, Mrs. Vardell, to whom do you look for your safety and protection?

A. To the conductor.

Q. Would you feel as safe if you knew that there was no conductor on the train, and only a porter on the train?

A. No, I wouldn't in any emergency.

Q. Have you ever had the train conductor to render to you any service on the train, Mrs. Vardell, when you were in a Pullman car? By the train conductor, I mean the man up in front of the chair car—the conductor up there.

A. Not when I was riding in the Pullman.

Mr. Morgan: That is all.

Mr. Graves: No questions.

(Witness excused.)

Mr. Morgan: We will take John Roberts.

JOHN ROBERTS, a witness for defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. Your name is John Roberts?

A. Yes, sir.

Q. Where do you live, John?

A. San Antonio.

[fol. 495] Q. Are you a student now in the University?

A. Yes, sir.

Q. Have you had occasion to ride on Pullman cars, John?

A. Yes, sir.

Q. What year is this for you in school?

A. This is my fifth year.

Q. What do you study?

A. Law.

Q. John, you have been out at the University for five years and you know the students pretty well, don't you?

A. Yes, sir.

Q. From your experience with those students—have you ever had occasion to go on special trains with students, football specials and things of that kind?

A. Yes, sir.

Q. John, do you think that the students would listen to any correction from—on the part of a Pullman porter?

A. Well, do you mean would they obey him?

Q. Yes, sir.

A. I believe they would.

Q. You think they would?

A. Yes, sir.

Q. Do you think they would be more likely to obey a Pullman conductor than they would a Pullman porter?

A. Yes, sir.

Q. John, do you think that—you know that there is a great deal of drinking going on on trains, don't you?

A. Yes, sir.

Q. Do you think the women folks would be safer on the train if there was a Pullman conductor in charge than they [fol. 496] would be if there was only a Pullman porter?

A. I believe so.

Mr. Morgan: That is all.

## Cross-examination.

Questions by Mr. Graves:

- Q. How old are you?
- A. Twenty-two.
- Q. Were you born in San Antonio?
- A. No, sir.
- Q. Where were you born?
- A. Born in Crowell, Texas.
- Q. Crowell?
- A. Crowell, Texas.
- Q. Crowell, Texas?
- A. Yes, sir.
- Q. How many students are there in the University of Texas now?
- A. Oh, over 10,000, about 11,000.

Mr. Graves: That is all, Mr. Morgan.

(Witness excused.)

Mr. Morgan: We will take Miss Dorothy Dorman.

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MISS DOROTHY DORMAN, a witness for defendants, having been duly sworn, testified as follows:

## Direct examination.

Questions by Mr. Morgan:

- Q. Miss Dorman, where do you live?
- A. Dallas.
- Q. Are you a native of Dallas?
- [fol. 497]. A. Yes, sir.
- Q. You, too, are a student in the University?
- A. Yes, sir.
- Q. Have you had occasion to ride on Pullmans, Miss Dorman?
- A. Yes, sir.
- Q. When you were riding on the Pullman trains, do you think that you are safer if there is a conductor in charge than you are if there is only a negro porter in charge?
- A. I think so,

Mr. Morgan: That is all.

(Witness excused.)

Mr. Morgan: Next, I would like to have Miss Matala.

MISS MARIA MATALA, a witness for defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. Miss Matala, where do you live?

A. In Dallas.

Q. How long have you been living in Dallas?

A. One year.

Judge McMillan: What is the name, counsel?

Mr. Morgan: Maria Matala, M-a-t-a-l-a.

The Witness: That is right.

Judge McMillan: What is your first name?

The Witness: Maria, M-a-r-i-a.

Judge McMillan: Matala?

The Witness: That is right.

[fol. 498] Judge McMillan: I just keep the names of witnesses.

Mr. Morgan: Yes.

Q. Miss Matala, where did you come from before you moved to Dallas?

A. Minnesota.

Q. You are a native of Minnesota?

A. Yes, I am.

Q. Have you had occasion to ride on Pullman trains?

A. Yes, sir.

Q. Miss Matala, when you are riding on the Pullman trains do you think you are safer if there is a Pullman conductor in charge of that train than you would be if only a negro porter was in charge?

A. Yes.

Q. You were born, you say, and grew up in Minnesota?

A. Yes.

Mr. Morgan: I think that is all.

(Witness excused.)

Mr. Morgan: I will next like to have Miss Muse.

MISS MARGIE MUSE, a witness for defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. You are Miss Margie Muse?

A. Yes, sir.

Q. You live here in Austin, do you, Miss Muse, now?

[fol. 499] A. Yes.

Q. Where are you employed?

A. At the Scottish Rite Dormitory.

Q. In what capacity?

A. I am on the staff.

Q. In what capacity did you say?

A. I am on the staff.

Q. On the staff. Now, just what are your duties—do you supervise or help to take care of the girls?

A. My title is Associate Social Director.

Q. Now, Miss Muse, the Scottish Rite Dormitory is on the Campus of the University maintained for a house of young women who are in attendance at the University?

A. Yes, sir.

Q. And it is your duty to help to take care of those girls?

A. Yes.

Q. Do you, Miss Muse, have occasion on your behalf to occasionally ride on the Pullman cars?

A. Occasionally.

Q. By the way, Miss Muse, are you the daughter of the old Judge Muse who used to be at Sherman?

A. I am.

Q. All right; you are a Texas girl, then, aren't you?

A. Texas born, yes.

Q. Miss Muse, if you were riding in a Pullman car would you feel that you were safer if you had a conductor in [fol. 500] charge than you would feel if you had only a porter in charge?

A. I would.

Q. What about the young women who are under your supervision out there; when you have occasion to send them from the University home.

A. Well, I have nothing to do with the way they go home. They have permission from their parents, they have signed permissions.

Q. I understand, but I am asking you this question, do you think the girls—it would be safer for their protection for them to be under the care of a conductor than it would be for them to be only under the care of a Negro porter?

A. Yes, sir, I think so with the conductor.

Q. Miss Muse, in your travels do you remember seeing a train conductor back in the Pullman cars?

A. I don't recall.

Q. You seldom, if ever, see the conductor, do you?

A. Yes, I do.

Mr. Morgan: I believe that is all.

Mr. Graves: No questions.

(Witness excused.)

Mr. Morgan: We will have Miss Ann Hill, please.

[fol. 501] ANNIE C. HILL, a witness for defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. You have lived here in Austin for a long time, haven't you, Miss Ann?

A. Yes, sir.

Q. You have been associated with the University for a number of years, haven't you?

A. I have.

Q. You have girls that now live in your home with you, Miss Ann?

A. I do.

Q. Do you have occasion to be intimate and closely associated with the girls—

A. Yes, sir.

Q. —as well as the young men over in the Library?

A. Yes, sir.

Q. Miss Ann, you use the Pullman cars, do you, when you travel?

A. Yes.

Q. For your own protection and safety do you feel that you would rather be traveling if you had a Pullman conductor in charge than if you had only a porter in charge?

A. I certainly would.

Q. Do you think, Miss Ann, that the young men—the young girls that are with you as well as the other girls in the [fol. 502] University—do you think they would be safer if they were under the care of a conductor than they would be if they were under the care only of a porter?

A. That is the way I feel about it.

Q. You, of course, are familiar, Miss Ann, with the amount of drinking that goes on on the Pullman cars?

A. Largely from hearsay; not from—

Q. Yes, I understand. I believe that is all.

#### Cross-examination.

##### Questions by Mr. Graves:

Q. Miss Annie, you travel frequently on Pullman cars?

A. Well, my vacations are largely trips somewhere.

Q. On the Pullmans?

A. Practically almost always on the Pullmans.

Q. Yes, ma'am. Now, you draw a distinction, do you not, between a colored man who has put in long years of service and experience in the employ of a company like the Pullman Company, acted as a porter and has proved to be trustworthy and faithful and a man of good character, and another man that you don't know anything about?

A. Well, I think there would be, of course, a difference—

Q. You would attach—pardon me—

A. But I think that I would always feel safer if I knew there was a Pullman conductor—a white Pullman conductor on my coach. I have that feeling.

Q. Do you mean to say that you don't think there are any [fol. 503] colored people that are faithful and trustworthy and reliable?

A. Not at all, no; I don't have that feeling; I think there are.

Q. As a matter of fact, you know some of them are, don't you, Miss Annie?

A. Why, certainly; certainly I do.

Mr. Graves: That is all.

(Witness excused.)

Mr. Morgan: We will have Elliot Roberts next.

ELLIOT ROBERTS, a witness for defendants, having been duly sworn, testified as follows:

**Direct examination**

Questions by Mr. Morgan:

Q. Your name is Elliot Roberts?

A. Yes, sir.

Q. Where do you live, Elliot?

A. San Benito, Sir.

Judge McMillan: What is the name, please?

The Witness: Elliot Roberts.

Mr. Morgan: Elliot Roberts.

Judge McMillan: Where does he live?

Mr. Morgan: San Benito.

Q. You, too, are a student, are you, Elliot?

A. Yes, sir.

Q. You, of course, make these trips that University boys make when they go off on these excursions to Fort Worth [fol. 504] and Dallas?

A. Sometimes.

Q. You have had occasion to ride on the train, of course?

A. Yes, sir.

Q. Elliot, do you think the boys and girls would pay much attention to a Pullman porter?

A. On excursions, no, sir.

Q. Do you think they would be more likely to pay attention to the Pullman conductor?

A. I do think so.

Q. Elliot, if you had occasion to send some member of your family—your mother—do you have a sister?

A. No, sir.

Q. If your mother were going away do you feel that she would be safer if she were in charge of a Pullman conductor than she would be if only in charge of a Pullman porter?

A. Well, just from what you have said, yes, sir.

Mr. Morgan: I believe that is all.

Mr. Graves: That is all.

(Witness excused.)

Mr. Morgan: If Your Honor please, we could go on with this indefinitely. I want to use just one more boy and then we will discontinue, because the others that are here, I think, if placed on the stand would testify to the same things.

Judge Sibley: All right.

Mr. Graves: We are not in any querulous mood with counsel, my friend, here, but we do object to his statement that he could go on with this indefinitely because we don't [fol. 505] think that he could. (Laughter)

Mr. Morgan: I believe the record shows there are over 10,000 students at the University. (Laughter)

LAMBERT ROOT, a witness for defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. Your name is Mr. Root?

A. Yes, sir.

Q. What is your first name?

A. Lambert.

Q. Where do you live, Lambert?

A. Mineral Wells.

Q. That is right over west of Fort Worth, isn't it?

A. Yes, sir.

Q. Lambert, you, too, are a student out in the University, are you not?

A. Yes, sir.

Q. What year is this for you out there?

A. This is my first year.

Q. You are a freshman?

A. Well, I started in Law School; I went to Oklahoma four years.

Q. Oh, you got off to Oklahoma and went to school?

A. Yes, sir.

[fol. 506] Q. And you are in Law School this year?

A. Yes, sir.

Q. Have you any sisters?

A. Yes, sir, I have.

Q. How old are they?

A. One sister is 30.

Q. She is older than you?

A. Yes, sir.

Q. Lambert, would you think that your mother or your sister would be as safe on a Pullman train—with a porter in charge as they would be if they were in charge of a Pullman conductor?

A. Well, they might be as safe, but I believe I would rely more on a conductor than I would a porter.

Q. You think you would feel better about it if you knew they were in charge of a conductor than you would if you knew they were in charge of a porter?

A. Yes, sir.

Mr. Morgan: I think that is all.

Mr. Graves: That is all.

Mr. Morgan: This gentleman right here, I would like to have him; this gentleman sitting here on the end, please.

[fol. 507] BOB COQUAT, a witness for defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Morgan:

Q. You are Mr. Bob Cokert?

A. Bob Coquat, C-o-q-u-a-t.

Q. C-o-q-u-a-t, is that the way you spell it?

A. That is right.

Q. Where do you live, Bob?

A. At Three Rivers.

Q. Three Rivers, Texas?

A. That is right.

Q. Are you a student at the University?

A. Yes, I am.

Q. Bob, have you had occasion to use the Pullman cars—the Pullman trains a great deal?

A. Yes, I have.

Q. Did you have occasion this last summer to make a rather extended trip?

A. Yes, I did.

Q. Where did you go?

A. We went to Europe, but, of course, first we went to New York—from San Antonio to New York.

Q. By train?

A. Yes, sir, by train.

Q. By "we", whom do you mean?

A. My mother and my sister and I.

[fol. 508] Q. Your mother and your sister and you?

A. Yes, sir.

Q. So you made the round trip from here to New York and back on your European trip by train?

A. Yes, sir.

Q. And you rode on the Pullman?

A. Yes, sir.

Q. Now, Bob, do you think that your mother or your sister would be safer on a train if they were under the supervision of a Pullman conductor than they would be if they were only under the supervision of a Pullman porter?

A. Yes, sir, I do.

Mr. Morgan: You may have the witness.

Cross-examination.

Questions by Mr. Graves:

Q. Where did you say you lived?

A. Sir?

Q. Where do you live?

A. At Three Rivers, Texas.

Q. Yes.

Mr. Graves: That is all.

Mr. Morgan: I believe that is all, if Your Honors please, with these boys. If Your Honors please, may these witnesses be excused; they want to go back.

Judge Sibley: Yes, sir, if you are through with them, they may go.

[fol. 509] Mr. Morgan: Is that all right with you?

Mr. Graves: Yes, sir.

Mr. Morgan: If Your Honors please, we are just about through with our testimony. We are in this position;

we had on the suggestion of counsel as to the length of time we thought it would take, we both were under the impression that it would probably take longer than it has; they advised us yesterday afternoon that they thought that it would probably consume half of the morning, and all along we thought that would take up most of today. We are not asking that the matter be delayed at all, but we may be in position now, if the Court will give us just about five minutes, to say to the Court that we are through with our testimony; but I would like for the Court to give us just a few minutes to confer with associate counsel.

Judge Sibley: Well, we usually take about a five minute recess in the middle of the afternoon, so we will take it now.

Mr. Morgan: All right; thank you.

(Thereupon at 3:15 o'clock p. m. a recess was taken until 3:30 o'clock p. m.)

Mr. Morgan: May it please the Court, counsel has agreed to stipulate as to one item.

Judge Sibley: Yes, sir.

[fol. 510]

#### STIPULATION

Mr. Morgan: And that is pursuant to the provisions of the Order that they are complaining of. I should like to read into the record the provisions about which I should like to stipulate, and then I will attempt to stipulate it, if I may.

"It is further ordered by the Railroad Commission of Texas that in any case where it is the desire of any railroad company, receiver or trustee to operate over its line of railway a sleeping car or cars without fully complying with the provisions of the orders above set out, the Commission shall be notified, and its consent secured before such change or divergency from the terms of said orders is put in force."

In connection with that, we would like to stipulate, if the Court please, that none of the plaintiffs in this suit have notified the Commission of its desire to be relieved from the provisions of the order, nor has such consent been secured, nor has there been issued by the Commission any order itself, nor no application made for such exception.

Judge Sibley: Do you close?

Mr. Morgan: Yes, sir, with that.

Judge McMillan: Are you going to stipulate that?

Mr. Graves: Yes, I think I understood, and that is, that [fol. 511] we made no application for an exception to the order.

Mr. Morgan: Yes.

Mr. Graves: That is all right.

Mr. Morgan: With that, we close, if Your Honors please.

#### COLLOQUY

Mr. Graves: We have nothing, except these statements that we referred to this morning, and we desire to put them in evidence. Counsel are looking over them now. There is one other matter. We filed a petition of intervention for the three intervenor plaintiffs, and it adopts the allegations of the complaint, the amended complaint, and it has only one fact, I believe, that isn't in the complaint, conditionally; and that is, that these three intervenors had no notice of the hearing that was held by the Railroad Commission, and took no part in it, and knew nothing about it.

Counsel haven't denied that, they haven't filed any answer to it. They haven't really had much time in which to prepare an answer, but I assume they will not controvert those facts.

Mr. Lewis: We will agree that the intervening porters did not receive any notice of the prospective hearing before the Commission.

Mr. Graves: And didn't participate in it.

Mr. Lewis: We will agree they didn't participate in it as parties. I don't know whether any of them were witnesses or not.

Mr. Graves: None of them were there, were they, Mr. Morgan, you were there?

[fol. 512] Mr. Morgan: They were not there, but we are not prepared to agree they were not notified.

Judge Sibley: They are sitting out there. We can find out if you can't agree about it.

Mr. Graves: We have alleged it and they haven't denied it.

Judge McMillan: The Assistant Attorney General has stipulated that they were not notified. Can the intervenor control his case?

Mr. Morgan: No, sir.

Judge Sibley: That acknowledgment of fact is made. Anything further now?

Mr. Graves: May it please the Court, there is one other point. I believe it was yesterday; it may have been this morning, when we offered the Railroad Commission records in evidence, and Your Honors indicated that he thought it was perhaps not admissible. We really didn't understand whether there was a definite ruling on that point, and we offer it in evidence.

Judge Sibley: What do you offer it to show? Of course, it isn't original evidence, what everybody said.

Mr. Graves: That is right, and we don't care to offer it for that purpose, and wouldn't want it considered for the purpose of showing what the facts are, but merely for the purpose of aiding the Court in interpreting the Order. I think that is the only purpose that it should serve.

[fol. 513] Judge Sibley: I don't see how it could serve that function. It is a right lengthy Order, written in English.

Mr. Graves: Well, we really don't care to press it. We would like to offer it, though, and if the Court desires to look over it, and if we, in the course of argument can point out in any way, it might have that—serve that purpose—we would like for the Court to reserve the ruling on it.

Judge Sibley: Well, do you all want it in or out?

Mr. Lewis: If the Court please, we have no great objection, but there have been no pleadings attacking the findings of the Commission in that respect. We lodge an objection to it on that basis, that it is immaterial and irrelevant.

Judge Sibley: We are in the position of a reviewing Court for the Commission. It might be that we ought to know what they decided on, but if we are here as an outside power trying to enforce the Constitution of the United States, I don't think we would have any business with what was proven there.

Judge McMillan: If you had attacked that order on the ground that they didn't have a fair hearing, and there was no evidence introduced before them to support the order, you might come up under the Supreme Court decisions, but you have no such attack on it, so what is the use of putting that record in evidence?

[fol 514] Mr. Graves: I doubt if it would become material except on one feature, that we think isn't in the case, and that is the rate feature of the case, and we think that—

Judge McMillan: Is there any ambiguity in the order that has to be explained? The order speaks for itself.

Judge Sibley: What sort of hearing there was would be primarily fixed by the notice required. You have got the notice here.

Mr. Graves: Yes, sir. There was one circumstance that happened at the hearing that I might mention at the outset, and having that notice, we called on the Commission at the outset of the hearing to advise us what statute they relied on for the basis of the promulgation of the order that they had originally issued, which was the matter that we thought would be heard again and the Commission, the record shows, that we got no response on that question, and we called on the gentlemen who had inaugurated the matter, counsel for the Pullman conductors' organization, and we got no response, and we think it is cumulative of the fact that at that time we didn't have any notice that it was contemplated that it would be a rate hearing.

Judge Sibley: Well, in the absence of any more definite purpose stated, we will rule it inadmissible.

Mr. Graves: We except.

[fol. 515] Judge Sibley: Have the other matters been put in shape?

Mr. Graves: We are offering these two matters here that counsel has indicated that they do not object to as to form, but they have some objection as to the substance of it.

Judge Sibley: Well?

Mr. Graves: And I would like to offer the two memoranda in evidence as being the resume of the affidavits, and as representing what the witnesses would testify if they were here.

Mr. Morgan: He has two instruments, one he calls consist of trains, to which we have no objection.

Judge Sibley: Which trains are those?

Mr. Morgan: Those are the trains involved in the—

Judge Sibley: Seventeen runs.

Mr. Morgan: Seventeen operations, I think, aren't they, Judge? The other seems to be a short form of statement of different witnesses, and as to the passenger miles per

annum, average coach rate, the average first class rate, and the difference. I assume from what counsel has said that this is offered on the theory that if this rate feature should be enforced that—

Judge Sibley: What they would lose by it.

Mr. Morgan: What they would lose by it, and we think that is immaterial and not a proper criterion, and there [fol. 516] are other methods that might be employed. There is no way to tell, in the absence of a test, as to just what the results would be, and therefore, at this time we think it wholly immaterial to any issue.

Judge Sibley: I think it might have some bearing on the reasonableness of the action taken. We will let it in.

Mr. Morgan: Note our exception.

Mr. Lewis: Your Honor, may we adopt that objection?

Judge Sibley: All right, sir.

(Thereupon said instruments were admitted in evidence as Plaintiffs' Exhibits Nos. 17 and 18, respectively.)

Mr. Graves: The plaintiffs, and Intervener Plaintiffs will close, Your Honor.

#### CLOSE OF TESTIMONY

[fol. 516 A]

#### PLAINTIFF'S EXHIBIT NO. 17

(Endorsed in ink) No. 38 Civil

Filed Feb. 20, 1940

Maxey Hart, Clerk

Pullman Line No.	Consist of Train	Crew
3128 T&NO RR CO. (Affidavit of J. H. Walsh, Supt.)	Baggage Car Pullman Car Combination Coach	Train Conductor Brakeman or Flagman Pullman Porter
3015 AT&SF Ry. Co. Affidavit of J. W. Murphy, Trainmaster	Pullman Car Two day coaches	Train Conductor Brakeman or Flagman Pullman porter
3010—BSL&W Ry. Co. Affidavit of A. C. Jackson, Asst. Genl. Passenger Agent and A. B. Kelly, Asst. Genl. Mgr.	Pullman Car Three passenger cars	Train Conductor Train Porter Flagman Pullman Porter
3748—SAU&G RR CO.	Pullman car Two Passenger cars	Train Conductor Train Porter Flagman Pullman Porter
3723—ST. LB&M Ry. Co.	Pullman Car Two Passenger Cars	Train Conductor Train Porter Flagman Pullman Porter

## PLAINTIFF'S EXHIBIT NO. 17

Pullman Line No.	Consist of Train	Crew
3501—T&P Ry. Co. (Affidavit by W. T. Long, Jr., Supt. of Trans.)	Texarkana to Marshall: Pullman Car Two Day Coaches Mail & Baggage Cars	Train Conductor Flagman Train Porter Pullman Porter
3531	Marshall to Texarkana Pullman Car One Day Coach Mail & Baggage Car	Train Conductor Flagman Train Porter Pullman Porter
3076 (Affidavit of T. W. Bowdry, Genl. Pass. Agent of CRI&P Ry. Co.)	Pullman Car One Cafe Coach Mail and Baggage Car	Train Conductor Brakeman Pullman Porter
[Vol. 516-B]		
3265—MK&T Affidavit of F. B. Griffin, General Passenger Agent	Pullman Car Two Coaches	Train Conductor Flagman Train Porter Pullman Porter
3251	Pullman Car Two Coaches	Train Conductor Flagman Train Porter Pullman Porter
3258	Pullman Car Two Coaches	Train Conductor Flagman Pullman Porter
3273	Pullman Car Two Coaches	Conductor Flagman Train Porter Pullman Porter
3424—St. LSF&T RY. Co. (Affidavit of C. J. Stephenson, Vice Pres. & Genl. Manager)	Pullman Car Combination baggage mail car Coach Diner-Lounge	Train Conductor Brakeman Train Porter Pullman Porter
3370—St. L. SW Ry. Co. Affidavit of E. Rhone, Asst. Supt.	Pullman Car Passenger Car Cafe-Lounge Car	Train Conductor Flagman Train Porter Attendant in charge Cafe-Lounge Car Pullman Porter
3175 KCS Ry. Co. Affidavit of F. H. Hooper, Supt. of Southern Division		Conductor Brakeman or flagman Train Porter Pullman Porter
3010 P&SF Ry. Co. Affidavit of H. R. McKee, Division Supt.	Pullman Car Two day coaches Diner Mail, Baggage & Express Car	Train Conductor Flagman Pullman Porter
3106 FW&DC RY Co. General Passenger Agent—F. D. Daggett	Pullman Car Two day coaches Dining Car	Train Conductor Flagman Pullman Porter

[fol. 516-C]

## PLAINTIFF'S EXHIBIT NO. 18

Endorsed: No. 38 Civil

Filed February 20, 1940

Maxey Hart, Clerk

Name of Affiant and Railroad	Passenger Miles Per Annum	Average Coach Rate	Average First-Class Rate	Difference
Accounts AT&SF Ry. Co.				
AT&SF Ry. CO.				
Line 3015 AT&SF Ry. Co.	107,862			2,560.00
Line 3010 P&SF Ry. Co.				2,762.00
L. A. Fritts, Auditor, Freight and Passenger Accounts BSL&W Ry. Co.				
Pullman Line 3010	242,096	1.65¢	2.30¢	.65¢
		242,096 x .65 equals \$1,573.63		
SAU&G RR CO.				
Pullman Line 3748	332,059	1.65	2.30	.65
		332,059 x .65 equals \$2,158.39		
St. LB&M Ry. Co.				
Pullman Line 3723	73,009	1.65	2.30	.65
		73,009 x .65 equals \$474.56		
L. W. Prior, Auditor Freight & Passenger Receipts I&GN RR CO.				
Pullman Line 3309	91,317	1.54	2.05	.51
		91,317 x .51 equals \$465.72		
[fol. 516-D]				
G. W. Danner, Auditor, T&P Ry.				
Pullman Line 3501	130,856	1.65	2.30	.65
		130,856 x .65 equals \$850.56		
Pullman Line 3531	248,252	1.65	2.30	.65
		248,252 x .65 equals \$1,613.64		
M. E. Pierce, Auditor Pass. Traffic CRI&P Ry. Co.				
Pullman Line 3076	1,126,400	Loss	\$2,987.63	
O. H. Bower, Auditor MK&T RR Co				
Line 3251	500,050			.451
Line 3258	155,590			
Line 3265	916,265			
Line 3273	12,695			
		1,584,600 x .451 equals \$7,146.55		
B. B. Lewis, Auditor, St.L-SE&T Ry. Co.				
Line 3424	16,594	.017477	.021334	\$ .003857
		16,594 x \$.003857 equals \$64.01		
W. G. Buechner, Auditor of Revenue KCS Ry. Co.				
Line 3175	1,182,124	Loss.....	\$ 503.60	
O. D. Weaver, Auditor of Revenue RW&DC Ry. Co.				
Line 3106	436,672	.018¢	.0203	.0023
		436,672 x .0023 equals \$1,004.34		

[fol. 516-E]

## Plaintiff's Exhibit No. 18, Cont'd.

Name of Affiant and Railroad	Number of Revenue Rail Tickets Honored	Proportion of Revenue Accruing Between Texarkana and Dallas	Proportion of Revenue that Would Accrue on same tickets if Coach Fare Basis were Assessed	Difference in Revenue to St. L. SW Ry. of Tex. Between Texarkana and Dallas for Twelve Months Period
A. R. Wood Audi- tor for Trustee, St. L-S. W. Railway Company Pullman Line 3370	1,133	\$4,429.37	3,279.20	\$1,150.17
J. T. Monroe, Pas- senger Traffic Man- ager Pullman Line 3128	2,559	\$2,933.84	\$2,143.62	\$790.22

[fol. 517] Reporters' Certificate to foregoing transcript  
omitted in printing.

[File endorsement omitted.]

[fol. 518] IN UNITED STATES DISTRICT COURT FOR THE WEST-  
ERN DISTRICT OF TEXAS, AUSTIN DIVISION

Civil Action No. 38

THE PULLMAN COMPANY, et al., Plaintiffs,

v.

THE RAILROAD COMMISSION OF TEXAS, et al., Defendants

Before Sibley, Circuit Judge, and McMillan and Allred,  
District Judges.

OPINION—Filed April 3, 1940

Per CURIAM:

The Pullman Company and a large number of Railway Companies operating in Texas and Trustees in charge of Railways operating in Texas bring this suit against the Railroad Commission of Texas, the various members thereof and the Attorney General, to restrain the enforcement of a

certain order made by the Commission on the 4th day of November, 1939.

The order purports to be made pursuant to the statutes of the State of Texas and a sum in excess of the jurisdictional amount is shown to be involved. The ground of attack is the unconstitutionality of the order. A temporary restraining order was applied for and granted. Accordingly, a case for three judges, under Section 266 of the Judicial Code, is presented. The case has been tried on its merits by a court so organized.

Upon the trial, without objection on the part of anyone, leave was granted to three Pullman porters and to three Pullman conductors to intervene. The Pullman porters made common cause with the plaintiffs and the Pullman conductors aligned themselves with the defendants.

[fol. 519] The order complained of is long and contains some twenty-nine very extensive findings of fact. These are followed by certain recitals labeled as orders and certain decrees with regard to rates which may be charged under certain circumstances by the Railroads and the Pullman Company. However, the gist of the order and the provision which is particularly assailed and which it is manifest it was the prime purpose of the order to put into effect, is as follows:

"It Is Further Ordered, Adjudged and Decreed that no sleeping car shall be operated on any line of railroad in the State of Texas when occupied by passengers holding the proper transportation for the accommodation of such cars, unless such cars are continuously in the charge of an employee or an authorized agent of the firm or corporation owning or operating the same having the rank and position of Pullman conductor."

Plaintiffs make their attack upon a great many grounds. It is unnecessary to mention more than two or three of them. It is first asserted that the order is not within the authority delegated to the Railroad Commission by any statute or law of the State of Texas. It is said, second, that in so far as it purports to relate to transportation rates, it is void for the reason that it was issued without notice of a hearing for such purpose. It is further contended that the order is unjust, arbitrary, unsupported by any basis in fact and, accordingly, confiscatory. Defendants joined issue with plain-

tiffs upon these matters and evidence was introduced at great length by both sides.

It appears without contradiction that there are some sixteen or seventeen routes in Texas where the Pullman cars, so far as the Pullman Company is concerned, are in charge of a porter. In most cases, this occurs only where the distance traversed is short, and it is invariably true that it occurs only in instances where there is only one Pullman car on the train. The general control of the Pullman car [fol. 520] and the passengers therein is lodged in the Railroad conductor. On trains where two or more Pullman cars are being carried contemporaneously, a Pullman conductor is in charge, subject, however, to the train conductor.

We are confronted at the outset by the question as to what authority the Railroad Commission has to make the challenged order. The Railroad Commission is a creature of statute. It gets no authority by implication or from the common law. It is given the authority by statute to correct abuses, but the Texas courts have been uniform in holding that the abuse must be one defined by law. In Railroad Commission v. H. & T. C. Ry. Co., 90 Texas, at page 352, the Supreme Court says:

"The question then arises, What abuses can the Railroad Commission correct? We think that it must be some abuse which has been defined by the law, and that the Commission would not by this power be authorized to enact a law defining what is an abuse or a disregard of duty on the part of a railroad corporation."

In State v. Sugarland Ry. Co., 163 S. W. 1047 (writ refused), the Court said:

"The Commission is a creature of the statute, based upon constitutional provision for the establishment of an agency in this state, with such powers as may be deemed adequate and advisable. Section 2, Art. 10, Const. of Texas. Being a creature of statute, with such powers only as the Legislature deemed adequate and advisable, it could deraign no authority by implication or from the common law. See Railroad Commission v. G., H. & S. A. Ry. Co., 51 Tex. Civ. App. 447, 112 S. W. 353. An order of the Commission, to be valid, must be based upon some express provision or delegation of power made by statute. R. R. Com. v. G., H. & S. A. Ry., supra; I. & G. N. R. R. Co. v. R. R. Com., 99 Tex.

332, 89 S. W. 961. We think that, before the appellee could claim the protection of such order, it must be able to put its finger upon the statute conferring upon the Commission the authority to make the same, which has not been done."

See also State v. St. L. S. W. Ry. Co., 165 S. W. 491.

[fol. 521] There is no Texas statute which forbids the operation of a train carrying a Pullman car without a Pullman conductor, nor is there any statute that defines such action as an abuse. The Legislature has fixed the necessary members of a train crew and a Pullman conductor is not included. Article 6380, Vernon's Annotated Texas Statutes, 1925. Defendants do not deny the correctness of the law as set out in the decisions quoted from. In fact they state, upon page 13 of their brief, that they concur in those views. Being called upon to put their finger upon the statute which authorizes the making of an order of this kind, they point to Article 6474. That Article does not denounce the transportation of a Pullman car without a Pullman conductor as an abuse, but relates to the matter of unjust discrimination and defines certain things which shall, under its terms, constitute unjust discrimination. It is summarized by defendants in their brief as follows:

"A duty is imposed on the railroads not to give any undue or unreasonable preference to any person or locality or subject any traffic to any disadvantage whatsoever, and a penalty is prescribed for failing to observe such duty."

We are not of the opinion that the order is sustained by the provisions of this statute. It will be noted that the statute denounces unjust discrimination. The Supreme Court of Texas, in construing Section 2 of Article 10 of the Constitution, upon which the statute is based, said, in St. Louis Southwestern Railway Co. v. State of Texas, 113 Texas, at page 579:

"But, whatever meaning should be ascribed to the word unjust, two things seem perfectly plain in construing Section 2 of Article X, of the Constitution, towit: first, that all discrimination in passenger fares was not forbidden, but only such as would operate unjustly."

It is certainly not an unjust discrimination to adapt the service to different conditions of traffic. Every train is not required to be the duplicate of every other train in order to avoid unjust discrimination. The record in the case fails

to support the contention that there is any unjust discrimination [fol. 522] as against the public generally by reason of the fact that on certain trains where only one Pullman car is being handled, the operation, so far as the Pullman Company is concerned, is in charge of a porter, who is subject to the direction and control of the train conductor. However, without regard to these matters, the order cannot be upheld as a correction of an unjust discrimination, because it is not within the Legislative definition of that term and the Commission is without power to make one of its own.

As we have heretofore noted, it cannot stand as a correction of an abuse, because the so-called abuse has not been defined or prohibited by law.

The regulation cannot be sustained as a rate order for the reasons, first, it was not made after notice given as required by law, and second, it is apparently predicated upon an attempt upon the part of the Commission to construe and enforce certain contracts between the Railroads and the Pullman Company, which it is without any statutory authority to do. Furthermore, in so far as it attempts to regulate the rates charged by the Pullman Company, it is void, as the Commission has no jurisdiction over the Pullman Company.

The intervenors Pullman conductors have raised on their own account certain jurisdictional questions, predicated upon the assertion and assumption in some instances that plaintiffs are operating their railroads in Texas in violation of the law. If it be conceded that, as intervenors, they have the right to question the propriety of the main proceeding in this fashion, we are still of the opinion that their contention is without merit and should be overruled.

The views which have been expressed make it unnecessary to rule on the question as to whether the order is arbitrary. The Commission being without statutory authority to make [fol. 523] an order of this character, the question as to its reasonableness is immaterial.

It accordingly follows from what has been said that a decree should be entered for the plaintiffs, and its terms may be settled after notice.

(S) Saml. H. Sibley, Circuit Judge. James V. Allred,  
District Judge. Robert J. McMillan, District  
Judge.

[File endorsement omitted.]

## [fol. 524] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

Civil Action No. 38

THE PULLMAN COMPANY, et al., Plaintiffs,

vs.

THE RAILROAD COMMISSION OF TEXAS, et al., Defendants

FINAL JUDGMENT—Filed April 23, 1940

This action came on to be heard on February 17, 1940, at this term, on the plaintiffs' motion for preliminary injunction, and at the same time on final trial on the merits, before a statutory court of three judges consisting of Sibley, Circuit Judge, and McMillan and Allred, District Judges; and, upon conclusion of the evidence, was argued by counsel, and thereupon, upon consideration thereof, it was Ordered, Adjudged and Decreed as follows, viz:

1. That the defendants' motions to dismiss the action be and are hereby overruled.
2. That the defendants, the Railroad Commission of Texas and Lon A. Smith, Ernest O. Thompson and Jerry Sadler, members of said commission, and Gerald C. Mann, Attorney General of the State of Texas, their respective successors, agents, representatives and employees, be and they are, each and all, hereby permanently enjoined from attempting to enforce against the plaintiffs, or any of them, the order of the Railroad Commission of Texas dated November 4, 1939 (Railroad Commission Docket No. 3669-R, an "Order amending passenger circular No. 164, issued by the Railroad [fol. 525] Commission of Texas on the 8th day of August, 1939") and the order of the Railroad Commission of Texas dated the 8th day of August, 1939, known as Passenger Circular 164, copies of which are attached to the Amended Complaint as Exhibit F and Exhibit A, respectively; and from instituting or prosecuting any suit or suits against the plaintiffs, or any of them, for penalties, or otherwise, for the violation of said orders, or any part thereof; and from taking any steps whatsoever looking to the enforcement of said orders, and from seeking in any way to penalize plaintiffs, or any of them, for violating or not obeying said orders, or any part thereof.

3. All costs incurred by the intervening defendants, or occasioned by their intervention, are taxed against said intervening defendants, M. B. Cunningham, W. A. Worley and W. M. Hadley. All other costs are taxed against the defendant the Railroad Commission of Texas.

To all of which judgment the defendants, including the intervening defendants, duly excepted.

Done this 23rd day of April 1940.

(S) Saml. H. Sibley, Circuit Judge. Robert J. McMillan, District Judge. James V. Allred, District Judge.

Approved as to form:

Claude Pollard, Ireland Graves, Attys. for Plffs.

Cecil C. Rotsch, Assistant Attorney General of Texas, Attorney for the Railroad Commission of Texas, the members thereof and the Attorney General of Texas.

Cecil A. Morgan, Attorney for intervening defendants.

Ent: Civ. O. B., Vol. 1, p. 93.

(File endorsement omitted.)

[fol. 526] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 11, 1940

#### FINDINGS OF FACT

1. The Pullman Company and a number of railway companies operating in Texas and trustees in charge of railways operating in Texas bring this suit against the Railroad Commission of Texas, the members thereof and the Attorney General of Texas, to restrain the enforcement of a certain order made by the Commission on November 4, 1939. In issuing the order the Commission purported to act pursuant to Texas statutes, and a sum in excess of the jurisdictional amount is shown to be involved. The order is challenged on constitutional grounds. A temporary re-

straining order was applied for and granted, and the plaintiffs continued to press for preliminary injunction. Accordingly, a case for three judges, under Section 266 of the Judicial Code, is presented. The case has been tried on its merits by a court so organized.

2. The complaint charged, and the proof shows, that the amount in controversy exceeds \$3,000.00, exclusive of interest and costs. Compliance with the challenged orders would devolve upon The Pullman Company an annual gross expense of approximately \$41,000.00, or an annual net expense [fol. 527] of approximately \$36,000.00; and by virtue of certain contracts between The Pullman Company and the railroad companies, a portion of this expense would be passed on to the railroads, but The Pullman Company would ultimately suffer a net annual expense of approximately \$25,000.00.

3. Upon the trial, without objection, leave was granted to three Pullman porters to intervene as plaintiffs and to three Pullman conductors to intervene as defendants. Each of the porters receives extra compensation of \$13.50 per month if on any part of his run he acts as porter-in-charge. If the order of the Railroad Commission, complained of herein, is enforced, the intervening plaintiffs and other porters operating in Texas as porters-in-charge will lose such extra compensation; and their retirement pay will in consequence be reduced.

4. The order complained of (a copy of which appears as Exhibit F appended to the Complaint) contains twenty-nine findings of fact, followed by certain recitals labeled as orders and decrees. The attack upon the order was concentrated, in main, upon a section, manifestly expressing the prime purpose and object sought to be accomplished by the Commission, reading as follows:

"It Is Further Ordered, Adjudged And Decreed that no sleeping car shall be operated on any line of railroad in the State of Texas when occupied by passengers holding the proper transportation for the accommodation of such cars, unless such cars are continuously in the charge of an employee or an authorized agent of the firm or corporation owning or operating the same having the rank and position of Pullman conductor."

5. The order is challenged on the grounds, among others (a) that it is not within the authority delegated to the Railroad Commission by any statute or law of the State of Texas, and (b) that, in so far as it purports to relate to transportation rates, it is void for the reason that it was issued without notice of a hearing for such purpose, and (c) that it is unjust, arbitrary, unsupported by any basis in fact and, hence, confiscatory. Issue was joined [fol. 528] on all these matters and evidence was introduced at great length by both sides.

6. It appears without contradiction that there are seventeen routes or lines in Texas where Pullman cars, in so far as The Pullman Company is concerned, are in charge of a porter. In most cases this occurs only where the distance traversed is short, and in every instance it occurs only on those trains that, as regularly operated, carry only one Pullman car. These lines are described in Exhibit G attached to the Complaint. One of them, however, No. 3259, was discontinued prior to the trial. On trains carrying two or more Pullman cars a Pullman conductor accompanies the train. In all instances, however, the general control of the Pullman car or cars and passengers therein is lodged in the railroad conductor. The entire train and the railroad employees and Pullman employees are subject to the jurisdiction of the train conductor.

7. All of the Pullman porters in Texas are negroes who have been in the service of the company as porters for more than ten years, and those acting as porters-in-charge for longer terms, ranging from twenty years to thirty-four years of continuous service. The men serving as porters-in-charge on the lines in Texas described in Exhibit G have demonstrated that they are substantial, reliable men of good character and good intelligence. By training and experience they are qualified and competent to discharge the duties assigned to them as porters-in-charge; and the fact that they are negroes and are called porters-in-charge does not disqualify them or render them incompetent. The service rendered to passengers in the Pullman cars on the trains not accompanied by a Pullman conductor is in no way inferior to the service rendered on the trains accompanied by a Pullman conductor. The Pullman conductors and the porters-in-charge have had the same training, and they receive regularly the same instructions. There is no need

[fol. 529] of a Pullman conductor in addition to the porters-in-charge on the lines described in Exhibit G. In view of the Pullman Company's experience, extending over a long period of years, there is no reasonable basis for a finding contrary to the facts stated in this Finding No. 7.

#### CONCLUSIONS OF LAW.

1. While the challenged orders are directed in terms against the railroads, The Pullman Company is directly affected. The railroads cannot place a Pullman conductor on the Pullman cars except by requiring The Pullman Company to do so. Consequently, The Pullman Company has the requisite interest to challenge the orders. The matter in controversy as to The Fullman Company is the right to carry on its business free of the prohibition of the order. The value of such right is shown to be in excess of \$3,000.00, exclusive of interest and costs. Buck v. Gallagher, 307 U. S. 95, 100; Packard v. Banton, 264 U. S. 140, 142; Western & Atlantic R. R. v. Railroad Commission of Georgia, 261 U. S. 264.

2. Since the order is directed in terms against the railroads and not against The Pullman Company, the only way in which The Pullman Company can obtain effective relief is by means of an injunction prohibiting enforcement of the challenged orders against the railroads. For this reason and for the further reason that the order undertakes to determine, and interferes with, the rights of The Pullman Company in its contracts with the railroads, the railroads are necessary and proper parties to this action. Rule 19, Federal Rules of Civil Procedure; Niles-Bement Co. v. Iron Moulders Union, 254 U. S. 77, 81-82; see also Troy v. Whitehead, 222 U. S. 39, 41; Ducker v. Butler, 104 Fed. (2d) 236, 238 (App. D. C. 1939).

[fol. 530] 3. The motions to dismiss the action on the ground of misjoinder are not well taken and should be overruled. Rule 21, Federal Rules of Civil Procedure, and authorities above cited.

4. The orders of the Railroad Commission are challenged on substantial Federal constitutional grounds, and this Court has jurisdiction to determine all questions at issue, local and Federal.

5. The Railroad Commission of Texas is a creature of statute, and it has such powers as have been validly conferred by the statutes of Texas. It derives no powers from the common law or by implication. *State v. Sugarland Railway Co.* (Tex. Civ. App.), 163 S. W. 1047, 1049 (writ of error refused).

6. The challenged orders, Passenger Circular 164 of August 8, 1939, and the amendment thereof, namely, the order of November 4, 1939, are not within the powers delegated to the Railroad Commission of Texas by statute. Because they are not sanctioned by law, they are void.

7. The power to issue the challenged orders is not derived from Article 6445, Revised Civil Statutes of Texas, 1925. The abuses, the correction of which is committed to the Railroad Commission, are only those abuses that have been denounced by statute as such or that have been prohibited by the Legislature. *Railroad Commission v. H. & T. C. Ry. Co.*, 90 Tex. 340, 352; 38 S. W. 750, 754; *State v. St. L. S. W. Ry. Co.* (Tex. Civ. App.), 165 S. W. 491, 496 (writ of error dismissed).

8. No Texas statute has defined as an abuse, or prohibited, the operation of a sleeping car that is not continuously in charge of a Pullman conductor in addition to the train conductor.

9. The challenged orders are not within the authority delegated to the Railroad Commission by Article 6474, Revised Civil Statutes of 1925. The operation of the sleeping car on such trains as those described in Exhibit G, in charge of a Pullman porter, subject to the supervision, direction and control of the train conductor, does not [fol. 531] amount to unjust discrimination as defined in said statute. The Railroad Commission has no authority to add to the definition. The statute does not require that every train be made the exact duplicate of every other train. It is not unjust discrimination to adapt the service to the varying traffic conditions.

10. Discrimination is not denounced by statute unless it is unjust. - The underlying provision of the Texas Constitution (Sec. 2, Art. X), upon which the statute, Article 6474 is based, does not forbid discrimination, even in respect to passenger fares, unless it is unjust discrimina-

tion. St. L. S. W. Ry. Co. v. State of Texas, 113 Tex. 570, 579.

11. The Texas Legislature having enacted a full crew law prohibiting the operation of any passenger train with less than a full crew consisting of four persons, one engineer, one fireman, one conductor and one brakeman, the Railroad Commission of Texas has no authority to supplement or augment the full crew statute. The statute is a penal one and cannot be extended by implication. Railroad Commission v. T. & N. O. Railroad Co. (Tex. Civ. App.), 42 S. W. (2d) 1091, 1093 (writ of error refused).

12. The order of November 4, 1939, cannot be sustained as a rate order for several reasons: (a) It was not made after notice as required by law. Art. 6449, R. C. S. 1925, requires ten days' notice to each railroad to be affected by an order fixing rates. No notice was issued indicating that at the hearing of August 8, 1939, rate matters would be considered. (b) The rate features of the order are apparently predicated upon the Commission's assumed authority to construe and enforce the contracts between the railroads and The Pullman Company, as to which the Railroad Commission has no authority. (c) In so far as the order attempts to regulate rates charged by The Pullman Company, it is void, since the Railroad Commission of Texas has no jurisdiction over The Pullman Company [fol. 532] and no authority to regulate Pullman rates. This question was expressly decided in the case of The Pullman Company v. Railroad Commission, No. 1791, Equity, United States District Court, Northern District of Texas; affirmed without written opinion by Circuit Court of Appeals, Fifth Circuit (1908). Since then the statutes have been re-adopted in the 1911 Code and in the 1925 Code without change in that respect.

13. In their briefs filed after the evidence was concluded, the Pullman conductors (intervenor defendants) raised on their own account certain jurisdictional questions, predicated, in some instances, upon the assertion and assumption that plaintiffs are operating their railroads in Texas in violation of the law. If it be conceded that, as intervenors, they have the right to question the propriety of the main proceeding in this fashion, we are still of the opinion that their contention is without merit and should be overruled.

14. Since the orders are not within the Railroad Commission's statutory powers, we find it unnecessary to dispose of the Federal constitutional questions. Siler v. L. & N. R. R. Co., 213 U. S. 175, 193.

15. We conclude that defendants' motions to dismiss the action should be denied; and that plaintiffs are entitled to judgment as prayed for.

This the 11th day of June, 1940.

(S.) Saml H. Sibley, United States Circuit Judge;  
Robert J. McMillan, United States District Judge;  
James V. Allred, United States District Judge.

[File endorsement omitted.]

[fol. 533] IN UNITED STATES DISTRICT COURT.

[Title omitted]

PETITION FOR APPEAL—Filed June 18, 1940

To the Honorable Judges of the District Court of the United States for the western district of Texas:

Your petitioners The Railroad Commission of Texas, and the individual members thereof, namely Lon A. Smith, Jerry Sadler and Ernest O. Thompson, the Attorney General of Texas, Gerald C. Mann, together with M. B. Cunningham, W. M. Hadley and W. A. Worley, intervening defendants, respectfully show:

The plaintiffs The Pullman Company and fifteen railroads joined together as plaintiffs and filed a Bill of Complaint in the United States District Court, Western District of Texas, on the 22 day of November, 1939, against The Railroad Commission of Texas, the three members thereof, and the Attorney General of Texas, to restrain the enforcement of a certain order made by the Commission on the 4th day of November 1939. Several grounds of attack were made, including the unconstitutionality of the order. An interlocutory order was applied for and granted. A copy of the same has been attached hereto, marked Exhibit "A" and made a part hereof. Accordingly, a case for three judges under Section 266 of the Judicial Code was presented and the court was assembled and the case tried on its merits

by a 3-Judge Court on the 17th day of February 1940. Said [fol. 534] 3-Judge Court caused to be entered a final judgment on the 23 day of April 1940, a copy of which final judgment has been marked Exhibit "B", attached hereto, and made a part hereof, which permanently enjoined The Railroad Commission of Texas, the individual members thereof, and the Attorney General of Texas, their respective successors, agents, representatives and employees from enforcing the order of November 4, 1939, which said final judgment further provided "to all of which judgment the defendants, including the intervening defendants, duly excepted." The court also rendered an opinion favorable to the plaintiffs, a copy of which opinion has been marked Exhibit "C", attached hereto, and made a part hereof.

The said final judgment is greatly to the prejudice and injury of your petitioners and is erroneous and inequitable.

The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the assignments of error and prayer for reversal, filed with the clerk pursuant to Rule 9 of the Rules of the United States Supreme Court; and there has been likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by Rule 12 of the Rules of the United States Supreme Court.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your petitioners pray for the allowance of an appeal in said cause to the Supreme Court of the United States agreeably to the statutes and rules of said Court in such cases made and provided, and that a proper order touching the security required of the petitioners may be made.

Dated this the 18 day of June, 1940.

Gerald C. Mann, Attorney General of Texas, Cecil C. Rotsch, Glenn R. Lewis, Lee Shoptaw, Attorneys for The Railroad Commission of Texas, Lon A. Smith, Jerry Sadler and Ernest O. Thompson, and Gerald C. Mann, Attorney General of Texas. By Cecil C. Rotsch.

A. B. Culbertson and Cecil A. Morgan, Attorneys for intervening defendants, M. B. Cunningham, W. M. Hadley and W. A. Worley. By Cecil A. Morgan.

[fol. 535-548] [File endorsement omitted.]

[fol. 549] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed June 18, 1940

The appellants assign the following errors in the record and proceedings in this case:

1

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code erred in overruling and in not sustaining the plea of the defendants to the jurisdiction of the court, their motion to dismiss and their motions relating to misjoinder of causes of action, misjoinder of parties-plaintiff, and an unlawful delegation of chartered rights from the railroad companies to The Pullman Company in that:

(a) The court had no jurisdiction to entertain a bill in equity wherein the plaintiffs pleaded that they were engaged in an illegal and unlawful enterprise in that the railroad companies by contract attempted to delegate a part of their charter powers to a foreign corporation, namely, The Pullman Company, in view of the mandatory provisions of Article 6260 Revised Civil Statutes of Texas which requires that only corporations chartered under the laws of the State of Texas to operate a railroad may operate railroads in this state and the damages as alleged by the plaintiffs to sustain jurisdiction were based upon interfering with the rights of the railroad companies and The Pullman Company under such invalid contracts.

[fol. 550] (b) The court had no jurisdiction to entertain the plaintiffs' bill which pleaded that some of the plaintiffs resided in the State of Texas and others resided without the ~~State of~~ Texas and it was not alleged with certainty the specific damage, if any, suffered by each of said plaintiffs.

2

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding that the Railroad Commission was without authority to promulgate the order complained of in that Article 6473 Vernon's Annotated Statutes provides "if any railroad company \* \* \* shall charge, collect, demand, or receive a

greater rate, charge or compensation than that fixed and established by the Commission for the transportation of freight, passengers or cars \*\*\* or for any other services performed or to be performed by it, such railroad company \*\*\* shall be deemed guilty of extortion". The pleadings and proof of the plaintiffs clearly established that the railroads of Texas by contract with The Pullman Company, a foreign corporation, were charging rates, fares and tolls for the transportation of passengers and sharing in them that had not been fixed or promulgated by the Railroad Commission, and in this manner the plaintiffs are clearly violating the law, and should have no standing in a court of equity seeking equitable relief to establish and protect them in such violation.

## 3

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in not sustaining the defendants' motions to dismiss the plaintiffs' Bill of Complaint because it was pleaded by the plaintiffs that the railroad companies had delegated to The Pullman Company a part of their charter powers, and in this indirect way the railroad companies were charging fares, tolls and rates for themselves in an amount in excess of the maximum sum allowed by the statutes of the State of Texas [fol. 551] and in this manner the railroad companies were doing indirectly what they cannot do directly by engaging in an ultra vires transaction and in a court of equity seek refuge and protection.

## 4

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding that the order complained of by the plaintiffs as promulgated by the Railroad Commission of Texas was made without statutory authority on the part of said Commission in that the laws of the State of Texas are mandatory in requiring that said Commission make rules and regulations governing railroads, namely Article 10, Section 2 of the Constitution and Article 6445 Revised Civil Statutes, and specifically provide that no railroad shall be operated in the State of Texas, unless such company is chartered under the laws of said state as set forth in Article 6260 Revised

Civil Statutes, and it is further made the duty of said Commission by Article 6474 which provides:

"Unjust discrimination is hereby prohibited and the following acts or either of them shall constitute unjust discrimination.

1. If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or shall give any undue or unreasonable preference or advantage to any particular person, firm or corporation, or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever."

Article 6445 provides:

"Power and authority are hereby conferred upon the Railroad Commission of Texas over all railroads, and suburban, belt and terminal railroads, and over all public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection therewith in this State, and over all persons, associations and corporations, private or municipal, owning or operating such railroad, wharf, dock, pier, elevator, warehouse, shed, track or other property to fix, and it is hereby made the duty of the said Commission to adopt all necessary rates, charges and regulations, to govern and regulate such railroads, persons, associations and corporations, and to correct abuses and prevent unjust discrimination in the rates, charges and tolls [fol. 552] of such railroads, persons, associations and corporations, and to fix division of rates, charges and regulations between railroads and other utilities and common carriers where a division is proper and correct, and to prevent any and all other abuses in the conduct of their business and to do and perform such other duties and details in connection therewith as may be provided by law."

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in issuing

a permanent injunction against the Railroad Commission of Texas, and the Attorney General, enjoining such state departments from carrying into effect regulations promulgated by the Railroad Commission for the safety, care, comfort, convenience, proper accommodation, charges, fares and transportation of passengers on sleeping cars and Pullman cars within the State of Texas and to prevent unjust abuses, discrimination and extortion in rates. By granting said permanent injunction the court substituted its own opinion for that of the Railroad Commission of Texas.

## 6

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code erred in holding that the Railroad Commission was without authority to promulgate a rate order in that Article 6448 Revised Civil Statutes imposes the duty upon the Railroad Commission to fix the rates of all railroads for both freight and passengers. Article 6449 Revised Civil Statutes provides that ten days notice of such hearing shall be a sufficient notice. In connection therewith it is to be noted that the "challenged order" recites on its face that notice was issued on the 19th of August and the hearing held on the 31st of August and further recites that "the Commission thus finds that all parties interested in the subject matter have been duly notified for the time and in the manner provided by law."

The ruling of the court is in conflict with the decisions of the State of Texas on the point of notice and hearing of rates in that such an attack as made in the case at bar is a [fol. 553] collateral attack on the question and the Supreme Court of Texas announced the rule in Texas Steel Company vs. Fort Worth & Denver City Ry. Co. et al., 45 SWR (2nd) 794, that a collateral attack could not be made upon an order fixing rates that were promulgated by the Railroad Commission of Texas.

## 7

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding that the attempts of the Railroad Commission to regulate the rates charged by The Pullman Company were void and in stating that "The Commission has no jurisdiction over The Pullman Company" in that Title 71,

Chapter 4, Revised Civil Statutes 1925, Article 4477 imposes the mandatory duty upon the Railroad Commission of Texas to enforce the Public Health Sanitary Code, and among other requirements is the one relating to:

"Each depot, railway coach, sleeping car, interurban car and street car while in use for the accommodation of the public shall be properly ventilated, and, if necessary, heated, and a sufficient amount of heat shall be furnished in time of need so that fresh air can be supplied without causing it to become unduly uncomfortably cold; and the janitor, conductor or other person in charge shall see to it that the air is replenished with fresh air from time to time as needed to prevent the same from becoming foul, unsanitary and oppressive."

## 8

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding that the Railroad Commission had no authority to regulate the rates to be charged by The Pullman Company for the reason that all railroads that do business in Texas must be chartered under the laws of the State of Texas and by virtue of Chapter 11, Title 112, Revised Civil Statutes, such railroads are definitely under the direct supervision and regulation of the Railroad Commission; thus by contract between the railroads and The Pullman Company the railroads cannot delegate their chartered powers derived from the state and by contract grant authority to The Pullman Company powers not [fol. 554] granted to the railroad companies by the state, and thus create an agency free of regulation by the Railroad Commission without boundaries or limitations as to its rates, rules or regulations.

## 9

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in entering judgment on April 23, 1940, permanently enjoining the Railroad Commission of Texas and Lon A. Smith, Ernest O. Thompson, and Jerry Sadler, members of said Commission, and Gerald C. Mann, Attorney General of the State of Texas, their respective successors, agents, representatives, and employees, from attempting to enforce

against the plaintiffs the order of the Railroad Commission of Texas, dated November 4, 1939, (Railroad Commission Docket No. 3669-R; and "Order Amending Passenger Circular No. 164, Issued by the Railroad Commission of Texas on the 8th day of August, 1939") and the order of the Railroad Commission of Texas dated August 8, 1939, known as Passenger Circular 164, and from enforcing said order, and from penalizing the plaintiffs for violating said order; because the Railroad Commission of Texas had the authority to pass and enforce said order by virtue of the fact that the Constitution of Texas authorizes the Legislature of Texas to pass laws to correct abuses. (Article X, Section 2, Constitution) and the Legislature has passed such a law and has conferred authority on the Railroad Commission of Texas "to govern and regulate \* \* \* railroads" and "to correct abuses" and "to prevent \* \* \* abuses in the conduct of their business" (Adopted in 1911, and now codified as Article 6445 of the Revised Civil Statutes of Texas) and the Legislature has not left it up to the Railroad Commission to define the "abuse", but the Legislature has defined the abuse involved in this case [fol. 555] by saying that "unjust discrimination is \* \* \* prohibited and" it shall constitute unjust discrimination "If any railroad \* \* \* shall give any undue \* \* \* preference or advantage to any particular person \* \* \* or locality, or subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever." (Article 6474 of the Revised Civil Statutes of Texas); and therefore, the Railroad Commission of Texas had the authority to adopt said order in question and enforce the same.

## 10

The said District Court, composed of three judges, as provided by Section 299 of the Judicial Code, erred in making any findings of fact of any kind, and particularly the kind it did make, because it is not for the Federal Courts to supplant the Commission's judgment even in the face of convincing proof that a different result would have been better, and it is not proper for the Court to determine which witnesses should be believed and which ones should be disbelieved, but it is only a question of whether or not there is any evidence on which the Commission's judgment can be founded, and as there was

such evidence in this case the Federal Court cannot disturb or interfere with the Commission's judgment or orders.

11

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in making the findings of fact set out in paragraph 7 of the court's findings of fact filed in this case, said findings of fact in said paragraph 7 beginning with the words "All of the Pullman porters in Texas", etc., and ending with the words "there is no reasonable basis for finding contrary to the facts stated in this finding No. 7"; because said findings of fact so set forth in paragraph 7 of the court's findings of fact are contrary to the evidence, and are not supported by the testimony and the evidence in this case.

[fol. 556]

12

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding (as stated in paragraph 1 of the court's conclusions of law) that the matter in controversy as to the Pullman Company is in excess of \$3,000, exclusive of interest and costs; because such a conclusion is contrary to the evidence and the testimony in this case and contrary to the law.

13

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding (as stated in paragraph 2 of the court's conclusions of law) that the railroads are necessary and proper parties to this action; because such a conclusion is contrary to the evidence and the testimony in this case, and contrary to the law.

14

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding (as stated in paragraph 6 of the court's conclusions of law) that the challenged orders, Passenger Circular 164 of August 8, 1939, and the amendment thereof, namely the order of November 4, 1939, was not within the powers delegated to the Railroad Commission, the

reason said court erred being as follows: The Railroad Commission of Texas has authority under the laws of Texas to make and enforce such orders, because the Constitution of Texas authorizes the Legislature of Texas to pass laws to correct abuses (Article X, Section 2, Constitution), and the Legislature has passed such a law, and has conferred authority upon the Railroad Commission of Texas "to govern and regulate \* \* \* railroads" and "to correct abuses" and "to prevent \* \* \* abuses in the conduct of their business." (Adopted 1911, and now codified as Article 6445, Revised Civil Statutes of Texas), and the [fol. 557] Legislature has not left it up to the Railroad Commission of Texas to define the "abuse", but the Legislature has defined the abuse involved in this case by saying that "unjust discrimination is \* \* \* prohibited" and it shall constitute unjust discrimination "1. If any railroad \* \* \* shall give any undue \* \* \* preference or advantage to any particular person \* \* \* or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever", and because of said provision in the Constitution and statutes of Texas, the Railroad Commission of Texas has authority to make and enforce such order.

## 15

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding (as stated in paragraph 7 of the court's conclusions of law) that the power to issue the challenged orders is not derived from Article 6445, Revised Civil Statutes of Texas, the reason said court erred being as follows: Said Article 6445 authorizes the Railroad Commission of Texas "to govern and regulate \* \* \* railroads" and "to correct abuses" and "to prevent \* \* \* abuses in the conduct of their business," and the failure of the defendants to comply with the order in question, that is, operate sleeping cars on lines of railroads in Texas without said cars being in the charge of a Pullman conductor, and operate sleeping cars on other lines with Pullman conductors in charge, is an abuse under the facts in this case, and has been defined as an abuse by the Legislature of Texas under Article 6474 of the Revised Civil Statutes of Texas; and therefore authority to issue the challenged order is derived from said Article 6445.

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding (as stated in paragraph 8 of the court's conclusions of law) that no Texas statute has defined as an abuse, or prohibited, the operation of a sleeping car that is not continuously in charge of a Pullman conductor in addition to the train conductor; the reason said court erred being as follows: The Constitution of Texas authorizes the Legislature of Texas to pass laws to correct abuses, and the Legislature of Texas has passed said law, to-wit, Article 6445, 6448 and 6474 of the Revised Civil Statutes of Texas.

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding (as stated in paragraph 9 of the court's conclusions of law) that the challenged orders are not within the authority delegated to the Railroad Commission of Texas by Article 6474, Revised Civil Statutes of Texas, the reason said court erred being as follows: Said Article 6474 provides that if any railroads shall give any undue preference or advantage to any particular person or locality it is an unjust discrimination, and under the facts in this case the plaintiffs have been, and are now, operating sleeping cars on some lines of railroad without said cars being in charge of an employee of the rank and position of Pullman conductor, and at the same time have operated other sleeping cars on other lines of railroad with said cars being in charge of a Pullman conductor, and the operation of sleeping cars on different lines in different manners in such fashion constitutes a discrimination and an abuse in violation of said Article 6474.

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding (as stated in paragraph 11 of the court's conclusions of law) that the Texas Legislature having enacted a full crew law requiring a crew of four men on a train, the Railroad Commission of Texas thereby has no authority to pass the order in question requiring Pullman

[fol. 559] conductors to be in charge of all sleeping cars; the reason said Court erred being as follows: That said full crew law is a separate act of the Legislature and does not prevent the Railroad Commission of Texas from preventing abuses and discrimination as authorized by Article X, Section 2, Constitution of Texas and Articles 6445, 6448 and 6474 of the Revised Civil Statutes of Texas.

19

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in denying and overruling the defendants' motion to dismiss, and in holding (as stated in paragraph 15 of the court's conclusions of law) that the defendants' motion to dismiss should be denied, the reason said Court erred being as follows: The plaintiffs' complaint failed to state a cause of action in favor of any plaintiff against any defendant upon which relief could be granted, in this, to-wit, the complaint failed to allege that there was insufficient evidence or no evidence before the Railroad Commission of Texas to support or justify the orders in question, or that said Commission entered an order or orders contrary to the evidence before it, or that in view of the evidence before said Commission said orders were arbitrary or unreasonable, or that said order or the enforcement thereof constituted unlawful interference with interstate commerce, or that said orders or the enforcement thereof constituted a taking of the plaintiffs' property without due process of law.

20

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in entering judgment on April 20, 1940, permanently enjoining the defendants from attempting to enforce against the plaintiffs the order of the Railroad Commission of Texas, dated November 4, 1939 (Railroad Commission Docket No. 3669-R, and Order Amending Passenger Circular No. 164, issued by the Railroad Commission on the 8th day of August, 1939) and the order of the Railroad Commission of Texas dated August 8, 1939, known as Passenger Circular No. 164, and from enforcing said orders, and from enforcing penalties for the violation

of said orders; the Court having erred for the following reasons, to-wit: The jurisdiction of the United States District Court for the Western District of Texas, where this case was tried, did not rest on diversity of citizenship, and therefore the only question open to said Court was whether or not the State action complained of, to-wit, said Railroad Commission action and order and the enforcement thereof, transgressed the Constitution of the United States and whatever "vague contours \* \* \* the Due Process Clause may place upon the exercise of the State's regulatory power"; and therefore the trial court did not have authority or power to adjudge or decree that the Railroad Commission was without statutory authority, that is, did not have authority under the Texas Constitution and statutes, to adopt and enforce said orders.

## 21

The said District Court, composed of three judges, as provided by Section 266 of the Judicial Code, erred in holding (as stated in the Court's opinion and in its conclusions of law and particularly in paragraph 6 of the Court's conclusions of law) that the challenged orders, Passenger Circular 164 of August 8, 1939, and the amendment thereof, namely the order of November 4, 1939, are not within the powers delegated to the Railroad Commission of Texas by statute; the Court having erred for the following reasons, to-wit: The jurisdiction of the United States District Court for the Western District of Texas, where this case was tried, did not rest on diversity of citizenship, and therefore the only question open to said Court was whether or not the State action complained of, to-wit, said Railroad Commission action and order and the enforcement thereof, transgressed the Constitution of the United States and whatever "vague contours [fol. 561] \* \* \* the Due Process Clause may place upon the exercise of the State's regulatory power"; and therefore the trial court did not have authority or power to adjudge or decree that the Railroad Commission was without statutory authority, that is, did not have authority under the Texas Constitution and statutes, to adopt and enforce said orders.

Wherefore, on account of the errors hereinbefore assigned, appellant prays that the said decree of the Dis-

trict Court of the United States for the Western District of Texas, dated April 23, 1940, in the above entitled cause, be reversed and a decree rendered in favor of these complainants.

Gerald C. Mann, Attorney General of Texas; Cecil C. Rotsch, Glenn R. Lewis, and Lee Shoptaw, all of Austin, Texas, Attorneys for The Railroad Commission of Texas, Lon A. Smith, Jerry Sadler and Ernest O. Thompson, and Gerald C. Mann, Attorney General of Texas. By Cecil C. Rotsch.

A. B. Culbertson and Cecil A. Morgan, of Fort Worth, Texas, Attorneys for intervening defendants M. B. Cunningham, W. M. Hadley and W. A. Worley. By Cecil A. Morgan.

[File endorsement omitted.]

[fol. 562] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 18, 1940

The petition of The Railroad Commission of Texas, and the individual members thereof, namely, Lon A. Smith, Jerry Sadler and Ernest O. Thompson; the Attorney General of Texas, Gerald C. Mann; together with M. B. Cunningham, W. M. Hadley and W. A. Worley, intervening defendants, the complainants in the above entitled cause, for an appeal in the above entitled cause to the Supreme Court of the United States from the judgment of the District Court of the United States for the Western District of Texas, having been filed herein, accompanied by an assignment of errors and statement as to jurisdiction, all as provided by Rules 9 and 12 of the Rules of the United States Supreme Court, and the said papers having been presented to this court and the record in this cause having been considered:

It is hereby Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final decree of the District Court of the United States for the Western District of Texas, entered in this cause on the 23<sup>rd</sup> day of April, 1940, and that the Clerk of the said

District Court of the United States for the Western District of Texas shall, within 40 days from this date, make and transmit to the Supreme Court of the United States, under [fols. 563-565] his hand and the seal of the Court, a true copy of the material parts of the record herein, which shall be designated by praecipe or a stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further Ordered that the said appellants shall give a good and sufficient cost bond in the sum of \$500.00 Dollars, conditioned as required by law.

Done by the Court this 18th day of June 1940.

(S) Robert J. McMillan, District Judge.

Entered: Civ. O. B., 1, page 125.

(File endorsement omitted)

[fols. 566-567] Citation in usual form showing service on Claude Pollard and Ireland Graves filed June 18, 1940, omitted in printing.

[fols. 568-570] Bond on Appeal for \$500.00 approved and filed June 18, 1940, omitted in printing.

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[fol. 571] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AS TO ORIGINAL PAPERS AND EXHIBITS ON APPEAL—  
Filed July 3, 1940

It is ordered that the following original papers and exhibits be transmitted by the clerk of this court to the Clerk of the Supreme Court of the United States in lieu of copies thereof, for the inspection of that Court, to wit:

Plaintiff's Exhibits Nos: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35.

Dated this 29 day of June, 1940.

(S) Saml. H. Sibley, Presiding Judge U. S.

Entered: Civ. O. B., Vol. 1, page 132.

(File endorsement omitted)

[fol. 572] IN UNITED STATES DISTRICT COURT

[Title omitted]

## STIPULATION AS TO RECORD ON APPEAL—Filed July 3, 1940

Pursuant to the provisions of Section 2 of Rule 10 of the Rules of the Supreme Court of the United States, it is stipulated by the parties to this action that the following parts of the record, proceedings, and evidence shall be included in the record on appeal:

1. Plaintiffs' First Amended Complaint.
2. Temporary restraining order, dated November 28, 1939.
- 2-a. Bond for Temporary Restraining order (omitting power of attorney and copy of temporary restraining order attached thereto).
3. Order constituting and assembling Three-Judge Court, dated January 12, 1940.
4. Writ to serve copies of complaint, etc., on W. Lee O'Daniel, Governor, dated January 13, 1940, and Marshal's return thereon.
5. Defendants' First Amended Motion (to dismiss).
6. Defendants' Original Answer.
7. Order of court allowing Warren J. West, et al., to intervene as plaintiffs.
8. Complaint of intervenor plaintiffs.
9. Motion of M. B. Cunningham, et al., to be permitted to intervene as defendants.
- [fol. 573] 10. Pleadings of intervenors M. B. Cunningham, et al.
11. The reporter's transcript of the evidence certified to by H. P. Bickler and Roy J. McLean, court reporters.
12. Opinion of the court, after trial on the merits, filed April 3, 1940.
13. Final judgment, dated April 23, 1940.
14. Findings of fact and conclusions of law, dated June 11, 1940.
15. Petition for appeal, filed and dated June 18, 1940,—Exhibits to be omitted.
16. Statement of jurisdiction as required by Supreme Court Rule 12.
17. Assignments of error.
18. Order allowing appeal, dated June 18, 1940.

19. Notice of appeal, with date of filing, and acknowledgement of service thereof,—Exhibits to be omitted.

20. Citation on appeal, and acknowledgment of service thereof.

21. Appeal bond, and approval thereof, dated June 18, 1940.

22. Order of the Presiding Judge directing the transmittal to the Supreme Court of certain original papers and exhibits.

23. Stipulation of the parties as to the record on appeal.

It is further stipulated by the parties to this action that, pursuant to the order of the Presiding Judge, the following papers and exhibits may be transmitted to the Supreme Court of the United States in lieu of copies thereof, to-wit:

Plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35.

Entered into and dated this 3rd day of July, 1940.

(S) Ireland Graves, Attorney for the plaintiff, The Pullman Company, and for the intervenor plaintiffs, Warren J. West, et al.

[fol. 574] (S) Claude Pollard, Attorney for all of the other plaintiffs. Cecil C. Rotsch, Assistant Attorney General, Attorney for defendants. Cecil C. Morgan, Attorney for intervenor defendants, M. B. Cunningham, et al.

(File endorsement omitted)

[fol. 575] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 576] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY, AND OF THE PARTS OF THE RECORD WHICH APPELLANTS THINK NECESSARY FOR THE CONSIDERATION THEREOF—Filed July 26, 1940

The appellants intend to rely upon the following points, in which it is contended by appellants that the Three-Judge District Court erred, to-wit:

1. The court erred in overruling and in not sustaining the plea of the defendants to the jurisdiction of the court, their motion to dismiss and their motions relating to misjoinder of causes of action, misjoinder of parties plaintiff, and an unlawful delegation of chartered rights from the railroad companies to The Pullman Company, because

(a) The court had no jurisdiction to entertain a bill in equity wherein the plaintiffs pleaded that they were engaged in an illegal and unlawful enterprise in that the railroad company, by contract attempted to delegate a part of their charter powers to a foreign coporation, namely, The Pullman Company, in view of the mandatory provisions of Article 6260, Revised Civil Statutes of Texas, [fol. 577] which requires that only corporations chartered under the laws of the State of Texas may operate railroads in said state, and the damages as alleged by the plaintiffs to sustain jurisdiction were based upon interfering with the rights of the railroad companies and The Pullman Company under such invalid contracts, and

(b) The court had no jurisdiction to entertain the plaintiffs' bill which pleaded that some of the plaintiffs resided in the State of Texas and others resided without the State of Texas and it was not alleged with certainty the specific damage, if any, suffered by each of the plaintiffs.

2. The court erred in holding that the Railroad Commission of Texas was without authority to promulgate the order complained of in that Article 6473 of Vernon's Annotated Revised Civil Statutes of Texas provides "if any railroad company \* \* \* shall charge \* \* \* or receive a greater rate, charge, or compensation than that fixed and established by the Commission \* \* \* such railroad company \* \* \* shall be deemed guilty of extortion;" and the pleadings and proof showed without contradiction that the defendant railroads by contract with the defendant, The Pullman Company, were charging rates, fares and tolls for the transportation of passengers that had not been fixed or promulgated by the Railroad Commission, and therefore the plaintiffs had no standing in a court of equity and no right to ask for equitable relief.

3. The court erred in not sustaining the defendants' motions to dismiss the plaintiffs' bill of complaint because it appeared in said bill that the railroad companies had

delegated to The Pullman Company a part of their charter powers, and in this indirect way the railroad companies were charging fares, tolls and rates for themselves in an amount in excess of the maximum sum allowed by the statutes of the State of Texas, and the railroad companies were doing indirectly what they cannot do directly, and therefore plaintiffs had no standing in a court of equity.

[fol. 578] 4. The court erred in holding that the order complained of by the Railroad Commission of Texas was made without statutory authority, because the laws of the State of Texas are mandatory in requiring that said Commission make rules and regulations governing railroads, namely, Article 10, Section 2, of the Constitution of Texas, and Articles 6445 and 6474 of the Revised Civil Statutes of Texas, which provisions of the law authorize the Commission to make the order in question.

5. The court erred in issuing a permanent injunction against the Railroad Commission of Texas, the members thereof, and the Attorney General of Texas, enjoining said parties from carrying into effect the order in question, because in doing so the court substituted its own opinion for that of the Railroad Commission of Texas.

6. The court erred in holding that the Railroad Commission of Texas was without authority to promulgate a rate order, because Article 6448 of the Revised Civil Statutes of Texas imposes a duty upon the Railroad Commission to fix the rates of all railroads, and because Article 6449 of the Revised Civil Statutes of Texas provides that ten days notice of such hearing shall be a sufficient notice, and in this case the order in question recited on its face that notice was issued on August 19, 1939, and hearing held on August 31, 1939, and the order recited that "the Commission thus finds that all parties interested in the subject matter have been duly notified for the time and in the manner provided by law," and said ruling of the court was in conflict with the decisions of the Supreme Court and the other courts of the State of Texas, and the attack on said order in regard to said notice is a collateral attack and a collateral attack cannot be maintained against such an order.

7. The court erred in holding that the attempts of the Railroad Commission of Texas to regulate the rates charged

by The Pullman Company were void and that the Commission [fol. 579] had no jurisdiction over The Pullman Company, because Title 71, Chapter 4, Revised Civil Statutes of Texas, and particularly Article 4477 of said statutes, imposes the mandatory duty upon the Railroad Commission to enforce the Public Health Sanitary Code of the State of Texas, and this was an order authorized by said code and the statutes in regard to the enforcement thereof.

8. The court erred in holding that the Railroad Commission had no authority to regulate the rates to be charged by The Pullman Company, because all railroads that do business in the State of Texas must be chartered under the laws of the State of Texas, and all such railroads are under the direct supervision of the Railroad Commission, and the railroads cannot delegate their chartered powers to The Pullman Company by contract and thereby escape regulation of the Railroad Commission or create an agency free from regulation by the Railroad Commission.

9. The court erred in entering a judgment enjoining the Railroad Commission of Texas, the members thereof, and the Attorney General of Texas, from enforcing the order in question, because the Railroad Commission of Texas had the authority to pass and enforce said order by virtue of the fact that the Constitution of Texas authorizes the Legislature of Texas to pass laws to correct abuses (Article 10, Section 2, Constitution) and the Legislature has passed such a law and has conferred authority on the Railroad Commission of Texas "to govern and regulate \* \* \* railroads" and "to correct abuses," and "to prevent \* \* \* abuses in the conduct of their business" (adopted 1911, and now codified as Article 6445 of the Revised Civil Statutes of Texas) and the Legislature has not left it up to the Railroad Commission to define the "abuse," but the Legislature has defined the abuse involved in this case by saying that "unjust discrimination is \* \* \* prohibited and" it shall constitute unjust discrimination "if any railroad \* \* \* shall give any undue \* \* \* preference or advantage to any particular person \* \* \* or locality, or [fol. 580] subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever" (Article 6474 of the Revised Civil Statutes of Texas); and therefore, the Railroad

Commission of Texas had the authority to adopt said order in question and enforce the same.

10. The court erred in making any findings of fact of any kind because it is not for the Federal courts to supplant the Commission's judgment even in the face of convincing proof that a different result would have been better, and it is not proper for the court to determine which witnesses should be believed and which ones should be disbelieved, but it is only a question of whether or not there is any evidence on which the Commission's judgment can be founded, and as there was such evidence in this case the Federal Court cannot disturb or interfere with the Commission's judgments or orders.

11. The court erred in making the findings of fact set out in paragraph 7 of the court's findings of fact filed in this case, said findings of fact in said paragraph 7 beginning with the words "All of the Pullman porters in Texas" and ending with the words "there is no reasonable basis for finding contrary to the facts stated in this finding No. 7", because said findings of fact so set forth in paragraph 7 of the court's findings are contrary to the evidence and are not supported by the testimony and the evidence in this case.

12. The court erred in overruling and in not sustaining the plea of the defendants to the jurisdiction of the court, and their motions to dismiss, because the plaintiffs in this case had no standing in a court of equity, for the reason that they relied on contracts between the railroad companies in this case and The Pullman Company, and said contracts between said railroad companies and The Pullman Company are monopolistic and violate both the United States and the State laws prohibiting trusts and monopolies and contracts in restraint of trade, and said contracts so relied on and pleaded and urged by the plaintiffs are void and illegal.

[fol. 581] 13. The court erred in holding (as stated in paragraph 2 of the court's conclusions of law) that the railroads are necessary and proper parties to this action, because such a conclusion is contrary to the evidence and testimony in this case and contrary to law.

14. The court erred in holding (as stated in paragraph 6 of the court's conclusions of law) that the challenged orders

in question were not within the powers delegated to the Railroad Commission of Texas because the Railroad Commission has authority by virtue of the fact that the Constitution of Texas authorizes the Legislature of Texas to pass laws to correct abuses (Article 10, Section 2, Constitution) and the Legislature has passed such a law and has conferred authority upon the Railroad Commission of Texas "to govern and regulate \* \* \* railroads" and "to correct abuses" and "to prevent \* \* \* abuses in the conduct of their business" (Adopted 1911, and now codified as Article 6445, Revised Civil Statutes of Texas), and the Legislature has not left it up to the Railroad Commission of Texas to define the "abuse", but the legislature has defined the abuse involved in this case by saying that "unjust discrimination is \* \* \* prohibited" and it shall constitute unjust discrimination "if any railroad \* \* \* shall give any undue \* \* \* preference or advantage to any particular person or locality or subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever"; and because of said provisions of the law of Texas, the Railroad Commission has authority to make and enforce such order.

15. The court erred in holding (as stated in paragraph 7 of the court's conclusions of law) that the power to issue the challenged order in question is not derived from Article 6445 of the Revised Civil Statutes of Texas, because said Article 6445 authorizes the Railroad Commission of Texas "to govern and regulate \* \* \* railroads" and "to correct abuses" and "to prevent \* \* \* abuses in the conduct of their business", and the failure of the defendants to comply [fol. 582] with the order in question, that is, operate sleeping cars on lines of railroads in Texas without said cars being in the charge of a Pullman conductor, and operate sleeping cars on other lines with Pullman conductors in charge, is an abuse under the facts in this case, and has been defined as an abuse by the Legislature of Texas under Article 6474 of the Revised Civil Statutes of Texas; and therefore the Railroad Commission of Texas had authority to make the order in question.

16. The court erred in holding (as stated in paragraph 8 of the court's conclusions of law) that no Texas Statute has defined as an abuse, or prohibited, the operation of a sleeping car that is not in charge of a Pullman conductor,

because the Constitution of Texas authorizes the Legislature of Texas to pass laws to correct abuses and the Legislature of Texas has passed said law, to-wit Articles 6445, 6448 and 6474 of the Revised Civil Statutes of Texas.

17. The court erred in holding (as stated in paragraph 9 of the court's conclusions of law) that the challenged orders are not within the authority delegated to the Railroad Commission of Texas by Article 6474 of the Revised Civil Statutes, because said Article 6474 provides that if any railroad shall give any undue preference or advantage to any particular person or locality it is an unjust discrimination, and under the facts in this case plaintiffs have been, and are now, operating sleeping cars on some lines of railroads without said cars being in charge of Pullman conductors, and at the same time have operated sleeping cars on other lines with said cars being in charge of a Pullman conductor, and the operation of sleeping cars on different lines in different manners in such fashion constitutes a discrimination and an abuse in violation of Article 6474.

18. The court erred in holding (as stated in paragraph 11 of the court's conclusions of law) that the Texas Legislature having enacted a full crew law requiring a crew of four men on a train, the Railroad Commission thereby has no authority to pass the order in question requiring Pull-[fol. 583] man conductors to be in charge of all sleeping cars, because said full crew law is a separate act of the Legislature and does not prevent the Railroad Commission of Texas from preventing abuses and discrimination as authorized by Article 10, Section 2, Constitution of Texas, and Articles 6445, 6448 and 6474 of the Revised Civil Statutes of Texas.

19. The court erred in denying and overruling the defendant's motion to dismiss and in holding (as stated in paragraph 15 of the court's conclusions of law) that the defendant's motion to dismiss should be denied, because the plaintiffs' complaint failed to state a cause of action in favor of any plaintiff against any defendant upon which relief could be granted, in this, to-wit, the complainant failed to allege that there was insufficient evidence or that there was no evidence before the Railroad Commission of Texas to support or justify the orders in question, or that said Commission entered an order or orders contrary to the evidence before it, or that in view of the evidence before

said Commission said orders were arbitrary and unreasonable, or that said order or the enforcement thereof constituted unlawful interference with interstate commerce, or that said orders or the enforcement thereof constituted a taking of the plaintiff's property without due process of law.

20. The court erred in permanently enjoining the defendants from attempting to enforce the orders in question, because the jurisdiction of the United States District Court, where this case was tried, did not rest on diversity of citizenship, and therefore the only question open to said Court was whether or not the state action complained of, to-wit, said Railroad Commission action and order and the enforcement thereof, transgressed the Constitution of the United States and whatever "vague contours \* \* \* the Due Process Clause may place upon the exercise of the State's regulatory power", and therefore the trial court did not [fol. 584] have authority or power to adjudge or decree that the Railroad Commission was without statutory authority, that is, did not have authority under the Texas Constitution and statutes, to adopt and enforce said orders.

21. The court erred in holding (as stated in the court's opinion and in its conclusions of law, and particularly in paragraph 6 of the Court's conclusions of law) that the orders in question are not within the powers delegated to the Railroad Commission, because the jurisdiction of the United States District Court, where this case was tried, did not rest on diversity of citizenship, and therefore the only question open to said Court was whether or not the state action complained of, to-wit (said Railroad Commission action and order and enforcement thereof, transgressed the Constitution of the United States and whatever "vague contours \* \* \* the Due Process Clause may place upon the exercise of the State's regulatory power", and therefore, the trial court did not have authority or power to adjudge or decree that the Railroad Commission was without statutory authority; that is, did not have authority under the Texas Constitution and statutes to adopt and enforce said orders.

Appellants hereby designate the following parts of the record which they think necessary to be printed for the

consideration of the foregoing points upon which appellants intend to rely:

1. Plaintiffs' First Amended Complaint.
2. Temporary restraining order, dated November 28, 1939.
3. Bond for Temporary Restraining Order (omitting Power of Attorney).
4. Order constituting and assembling Three-Judge Court, dated January 12, 1940.
5. Writ to serve copies of complaint, etc., on W. Lee O'Daniel, Governor, dated January 13, 1940; and Marshal's return thereon.
6. Defendants' First Amended Motion (to dismiss).
7. Defendants' Original Answer.
8. Order of court allowing Warren J. West, et al., to intervene as plaintiffs.  
[fol. 585] 9. Complaint of intervenor plaintiffs.
10. Motion of M. B. Cunningham, et al, to be permitted to intervene as defendants.
11. Pleadings of intervenors M. B. Cunningham, et al.
12. The reporter's transcript of the evidence certified to by H. P. Bickler and Roy J. McLean, court reporters.
13. Opinion of the court, after trial on the merits, filed April 3, 1940.
14. Final judgment, dated April 23, 1940.
15. Findings of fact and conclusions of law, dated June 11, 1940.
16. Petition for appeal, filed and dated June 18, 1940,—Exhibits to be omitted.
17. Statement of jurisdiction as required by Supreme Court Rule 12 (including attached exhibits).
18. Assignments of error.
19. Order allowing appeal, dated June 18, 1940.
20. Notice of appeal, with date of filing, and acknowledgment of service thereof,—Exhibits to be omitted.
21. Citation on appeal, and acknowledgment of service thereof.
22. Appeal bond, and approval thereof, dated June 18, 1940.
23. Stipulation of the parties as to the record on appeal.
24. This Statement of Points on which Appellants intend to rely and of parts of the record which Appellants

think necessary for the consideration thereof, and acknowledgment of service thereof.

Gerald C. Mann, Attorney General of Texas; Glenn R. Lewis, Lee Shoptaw, and Cecil C. Rotsch, all of Austin, Texas, Attorneys for The Railroad Commission of Texas, Lon A. Smith, Jerry Sadler and Ernest O. Thompson, and Gerald C. Mann, Attorney General of Texas. By Cecil C. Rotsch.

A. B. Culbertson and Cecil A. Morgan, of Fort Worth, Texas, Attorneys for intervening defendants M. B. Cunningham, W. M. Hadley and W. A. Wofley. By Cecil A. Morgan.

[fol. 586]      **ACKNOWLEDGMENT OF SERVICE**

Service of the foregoing statement of the points on which appellants intended to rely and designation of the parts of the record to be printed is acknowledged by the undersigned attorneys for appellees this 24th day of July, 1940.

Ireland Graves, Attorney for the Appellee, The Pullman Company, and for the Appellees, Warren J. West, et al.

Claude Pollard, Attorney for all of the other Appellees.

[fol. 586½] [File endorsement omitted.]

[fol. 587]      **IN SUPREME COURT OF THE UNITED STATES**

**DESIGNATION BY APPELLEES OF ADDITIONAL PARTS OF THE RECORD FOR PRINTING—Filed August 1, 1940**

Pursuant to paragraph 9 of Rule 13 of the rules of the Supreme Court, the appellees hereby designate the additional parts of the record which they think material:

1. Order of the Presiding Judge directing the transmittal to the Supreme Court of certain original papers and exhibits.

2. This designation of additional parts of the record for printing.

Lowell M. Greenlaw, Chicago, Illinois; Herbert S. Anderson, Chicago, Illinois; Charles L. Black, Austin, Texas; John W. Stayton, Austin, Texas; Ireland Graves, Austin, Texas. Attorneys for the appellee The Pullman Company and for the intervenor plaintiff appellees Warren J. West, et al. By Ireland Graves, Austin, Texas. Claude Pollard, Austin, Texas, Attorney for other appellees.

[fol. 588] Service of the foregoing designation by the appellees of additional parts of the record to be printed is acknowledged by the undersigned attorneys for appellants, this 31 day of July, 1940.

Cecil C. Rotsch, Attorney for appellants the Railroad Commission of Texas, Lon A. Smith, Jerry Sadler and Ernest O. Thompson, and Gerald C. Mann, Attorney General of Texas.

Cecil A. Morgan, Attorney for intervening defendants M. B. Cunningham, W. M. Hadley and W. A. Worley.

[fol. 589] [File endorsement omitted]

Endorsed on cover: File No. 44,632 W. Texas, D. C. U. S., term No. 283. Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson, et al., Appellants, vs. The Pullman Company, Guy A. Thompson, Trustee, The St. Louis, Brownsville and Mexico Railway Company, Debtor, et al., Filed July 26, 1940. Term No. 283 O. T. 1940.